The Sunshine & Right-to-Know Laws Manual

A Compliance Guide for Township Officials

- Detailed summaries of the laws
- Explanations of your duties
- The text of the laws
- Updated sections on related court cases and final determinations

PREPARED BY THE
PENNSYLVANIA STATE
ASSOCIATION OF
TOWNSHIP SUPERVISORS

2013 EDITION

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THE RIGHT-TO-KNOW LAW

Preface

PSATS HAS DEVELOPED THE FOLLOWING GUIDE to help township officials better understand Pennsylvania's Sunshine Law, which establishes guidelines for public meetings and actions, and the Right-to-Know Law, which requires townships to provide access to public records.

In this **2013 edition** of the guide, we not only summarize the laws but also provide the full text of each statute, sample policies and forms, and new and updated summaries of **related court cases and final determinations** through December 2013.

In reading this guide, please keep in mind that it is intended to provide township officials with a general **overview** of each law. Therefore, *it is not a legal document*. If you have any questions about information found in this guide or on the laws, please **consult your solicitor or call PSATS.**

An Overview of the Sunshine Law

A History of the Law

➢ **Law passed in 1986** — Local officials in Pennsylvania have had to comply with stricter open meeting requirements since January 3, 1987, when Act 84 of 1986 took effect, replacing Act 175 of 1974, the old Open Meetings Law. The biggest change was the requirement that *all official actions and deliberations held for the purpose of making a decision* must take place at a public meeting. Under the previous Sunshine Law, local officials needed only to vote and set official policy in public.

➢ **Law amended in 1993 to require public participation at meetings** — Under Act 20 of 1993, townships must allow the public to comment at meetings of the board of supervisors.

Act 20 amended the Sunshine Law to require that time be provided at each advertised regular and special meeting of the board of supervisors for taxpayers and residents to address any matter that is before the board. *(For more about this requirement, see page 13.)*

➢ **Law amended in 1996 to prohibit local officials from filling vacancies for elected office during a closed-door executive session** — Act 9 of 1996 specifically prohibits a public agency, including a board of supervisors, from holding a closed-door session to appoint or select a person to fill a vacancy in any elected office.

➢ **Law amended in 1998 to require local governing bodies to allow public comment before taking official action at a public meeting** — Act 93 of 1998 amended the Sunshine Law to require that the mandatory public comment period at meetings be held before "official action" is taken. To satisfy this requirement, townships may do one of two things:

- hold a comment period before each official action, or
- hold the public comment period at the beginning of the meeting before any action is taken.

Also under Act 93, if the plaintiff in a Sunshine Law lawsuit proves that the township violated the law "willfully" or with "wanton disregard," the court must award all or part of the attorney's fees and costs to the prevailing party. However, if the court finds that the legal challenge was "frivolous" or "brought with no substantial justification," it must award all or part of the attorney's fees and costs to the local government.

➢ **Law amended in 2011 to increase the penalty for officials who participate in a meeting with the intent and purpose of violating the law** — Act 56 of 2011 increased the fine from $100 to the costs of prosecution, plus a fine between $100 and $1,000 for the first offense and the costs of prosecution and a fine between $500 and $2,000 for any subsequent offense. The act also prohibits an agency, such as a township, from making a payment on behalf of the offender.

The Sunshine Law requires the board of supervisors to deliberate and take all official actions at meetings open to the public.

Who Must Comply

In addition to the board of supervisors, all township boards, commissions, councils, and authorities that make recommendations *(defined as an "official action"— see below)* must comply with the Sunshine Law. This means that zoning hearing boards, planning commissions, recreation committees, and environmental advisory committees must hold advertised meetings that are open to the public. They also must take minutes of their meetings.

Official Action

The Sunshine Law requires the board of supervisors to deliberate and take all official actions at meetings open to the public. The act defines "official action" as "recommendations made by an agency pursuant to statute, ordinance, or executive order; the establishment of policy by an agency; decisions on agency business; or a vote on any motion, proposal, resolution, rule, regulation, ordinance, or report."

Official action, therefore, is much more than action taken by a vote of the board. Recommendations, establishment of policy, and decisions on township business may occur without a vote. However, they are defined as "official action" and must occur in the context of a public meeting. Therefore, as stated previously, all township boards, commissions, councils, and authorities that make recommendations, including zoning hearing boards, planning commissions, recreation committees, and environmental advisory committees, must hold advertised public meetings and take minutes of these meetings.

The law defines "deliberations" as any discussion conducted for the purpose of making a decision. However, the inherent ambiguity of the act's language makes it difficult to determine what discussions fall within the meaning of "deliberation."

Although the law requires deliberations to be held at meetings open to the public, informational meetings at which one supervisor briefs his fellow board members on various matters may still be conducted in private. However, be careful. Informational meetings may inadvertently turn into deliberations. If you begin weighing pros and cons and arguing and debating, instead of just listening or asking for information, you may have wandered outside the "information session."

Your township solicitor is responsible for helping you to comply with the law. Therefore, if the board is planning to conduct a closed discussion, check with your solicitor to make sure you are complying with the Sunshine Law and make note of his or her recommendation.

Administrative Action

Although the law requires all "official action" to take place at open public meetings, township officials may take "administrative action" in private. Administrative action is defined as the execution of policies that were previously adopted by the board at an open public meeting.

For instance, if the board plans to vote on whether to install a sewer system in the township, that vote is considered official action and must take place at a public meeting. However, once that official action is taken, the administrative details of carrying out the project, such as scheduling construction workers and working with the engineers, do not have to be discussed in public.

Minute-Keeping Requirements

The minutes are a record of the actions boards have taken at their meetings. Therefore, the Sunshine Law requires minutes to include the date, time, and place of the meeting; the names of the board members present; the substance of all official actions; a record of any roll call votes taken by individual board members; and the names of all citizens who appeared officially and the subject of their comments.

Closed-Door Sessions

Township officials may hold closed-door sessions, but only under certain circumstances. The exceptions to the open meeting requirement include the following:

• **Executive sessions** held to discuss personnel and collective bargaining issues, real estate transactions, or litigation and to consider other business protected by the confidentiality provisions of various laws and court decisions. **However, the board of supervisors may not hold a closed-door session to interview, select, or appoint a person to fill a vacancy in any elected office.** This process must take place at a public meeting.

Township officials must announce their reason for holding an executive session at the open meeting held immediately before or after the executive session. Township supervisors may not vote on any motion, proposal, resolution, rule, regulation, ordinance, or order during an executive session.

There is no limit on the length of executive sessions. If the board expects the executive session to be lengthy and does not want to delay the meeting, it may hold the session at a different time and location. The supervisors must, however, announce their reason for holding the executive session at the public meeting held immediately before or after the session.

While personnel discussions may be held during an executive session, the official action to fire or discipline an employee must be made at a public meeting.

• **Conferences** at which deliberations of agency business or official action do not occur.

A conference is defined as "a training program or seminar, informational in nature, relating to the responsibilities of municipal officials." Such conferences may be held by the board of supervisors or an outside entity, such as PSATS or the state Department of Community and Economic Development.

Township officials may attend such conferences without advertising their attendance to the public, provided that no deliberations of township business take place during the sessions.

• **Certain working sessions conducted by the board of auditors** for the purpose of examining, analyzing, discussing, and deliberating various records and accounts. These may be held in private as long as no official action is taken with respect to such records and accounts. The auditors' organizational meeting and the meeting at which the audit is finalized, however, must be open to the public.

The board of supervisors may not hold a closed-door session to interview, select, or appoint a person to fill a vacancy in any elected office.

Where Meetings Should Be Held

The board of supervisors should avoid holding meetings in a supervisor's or a secretary's home since language in the law suggests that all township meetings should be held at the municipal building or some other public meeting site in the township that is open and available to the public.

Advertising Requirements

Under the definition of "public notice," townships must publish the date, time, and place of the meeting in a newspaper of general circulation and must post a notice at the principal office of the "agency" holding the meeting or at the public building where the meeting is to be held. This notice also must include the date, time, and place of the meeting.

Before the meeting, townships also must mail a notice to citizens and members of the news media who have supplied self-addressed, stamped envelopes for this purpose.

The act stipulates that townships must provide notice to newspapers far enough in advance of the meeting "to allow it to be published . . . before the date of the specified meeting."

Township officials should keep in mind that they may have to give more than 24 hours' notice for weekly newspapers.

Following is a summary of advertising requirements for various types of township meetings:

• **Regular meetings** — Dates, times, and locations of regular meetings must be advertised at least once each calendar year. Public notice of the first regularly scheduled *(organizational)* meeting must be given at least three days before the meeting. If the township decides to hold additional regular meetings after it has advertised its meeting schedule, it must also give public notice of these additional meetings.

• **Special meetings and hearings** — A special meeting is defined as a "meeting scheduled by an agency after the agency's regular schedule of meetings has been established." Public notice of such meetings and hearings must be given at least 24 hours before the meeting or hearing.

A minimum of a full 24 hours' notice must be provided from the time the newspaper hits the streets and the meeting time. For example, if a newspaper is delivered starting at 4 p.m., the meeting must be held after 4 p.m. the next day. Township officials should keep in mind that they may have to give more than 24 hours' notice for weekly newspapers. Under Section 604 of the Township Code, the notice must state the business to be conducted at the meeting.

• **Emergency meetings** — The law does not require public notice for emergency meetings "called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property."

• **Rescheduled meetings and hearings** — Public notice must be given at least 24 hours before the rescheduled meeting or hearing.

• **Recessed and reconvened meetings** — When meetings have been recessed and then reconvened, a notice must be posted at the principal office of the agency or the public building in which the meeting is to be held and provided to all citizens who have supplied self-addressed, stamped envelopes. Such meetings do not have to be advertised in a newspaper of general circulation.

• **Budget and other work sessions** — PSATS advises the board of supervisors to advertise budget and other work sessions as meetings open for public attendance.

• **Executive sessions** — The law does not require executive sessions to be advertised in a newspaper or at the township meeting site. However, township officials must announce their reason for holding an executive session at the open meeting held immediately before or after the executive session.

• **Cancellations** — There is no provision in the Sunshine Law for public notice of meeting cancellations. However, if possible, PSATS suggests giving 24 hours' notice in the newspaper and posting an announcement at the township office and/or public meeting site.

Public Comment Period

Townships must set aside a period of time at each advertised regular and special meeting to allow residents and taxpayers to address the board of supervisors on any matter that is before the board. The law does not specify the length of time.

If there is not enough time for public comment, the comment period may be deferred until the next regular meeting, or a special meeting may be held before the next regular meeting to receive public comment.

Townships, in consultation with their solicitors, should create a written policy for conducting public meetings and providing for public comment periods. *(See page 15 for guidelines on adopting this written policy.)* Since the law does not spell out exactly what must be provided in the way of public comment, consistency and reasonableness are key features for implementing a fair and successful comment period.

Townships must provide the public comment period before any "official action" is taken.

The rule of reason should apply. Do members of the public have a "reasonable" opportunity to comment? Are the means of public comment "reasonably" accessible to interested individuals?

If a township complies with the Sunshine Law, no one may seek to void a particular board action simply because there was a lack of comment on the issue.

Also, any person attending a meeting may raise an objection to a perceived violation of the Sunshine Law at any time during the meeting.

The Sunshine Law also authorizes townships to adopt "reasonable rules" to govern the conduct of their meetings and gives citizens one year to challenge actions allegedly taken at a closed meeting.

Townships must provide the public comment period before any "official action" is taken. The Sunshine Law defines the term "official action" as:

• Recommendations made by an agency pursuant to statute, ordinance, or executive order.

• The establishment of agency policy.

• The decisions on agency business made by an agency.

• The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report, or order.

Note that under this definition, the term "official action" constitutes much more than actions taken by a vote of the board. Recommendations, the establishment of policy, and decisions on township business may sometimes occur without a vote and are still treated as official actions.

To satisfy these requirements, townships may do one of two things:

- hold a comment period before each official action, or
- hold the public comment period at the beginning of the meeting before any action is taken.

If your township holds the comment period at the beginning of the meeting and later brings up an item or considers an action that is not on the agenda, it should again allow for public comment before voting or taking other action.

If, before January 1, 1993, your township had a practice or policy of holding special meetings before your advertised regular meeting solely for gathering public comment, you do not have to provide an additional public comment period at the regular meeting.

Use of Recording Devices

The law allows anyone attending township meetings to use recording devices, including tape recorders and video cameras. Townships may, however, enforce reasonable rules for the use of recording devices as long as the rules do not violate the act's intent.

For instance, the supervisors may decide that these devices must be placed in a particular location in the meeting room and cannot be used to disrupt the meeting. They also may decide that meetings do not have to stop to permit a citizen to change a tape, that citizens must use their own power sources when recording township meetings, and that television lights must be placed in the back of the room.

Violations of the Law

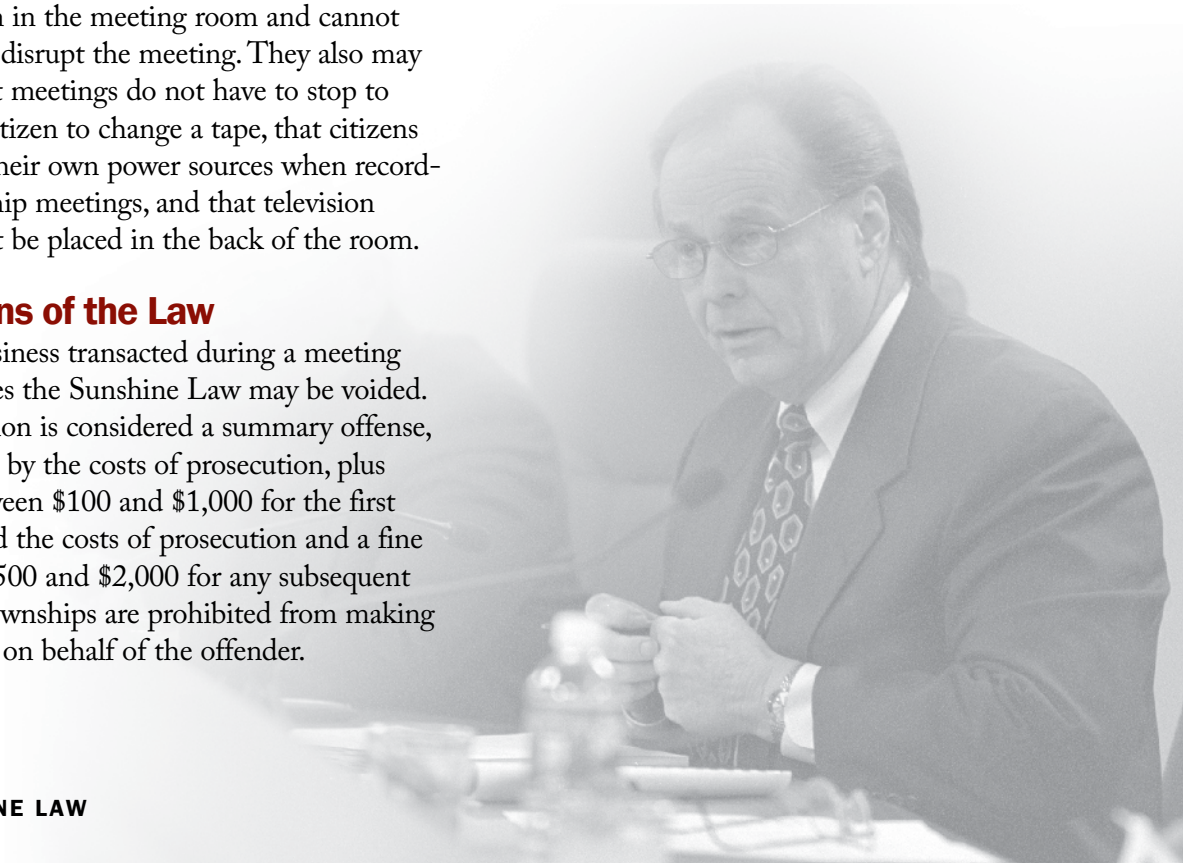
Any business transacted during a meeting that violates the Sunshine Law may be voided. The violation is considered a summary offense, punishable by the costs of prosecution, plus a fine between $100 and $1,000 for the first offense and the costs of prosecution and a fine between $500 and $2,000 for any subsequent offense. Townships are prohibited from making a payment on behalf of the offender.

Under the law, the courts are given a great deal of discretion in dealing with violations of the Sunshine Law.

Legal Challenges to Alleged Violations

Legal challenges to alleged violations of the act must be started within 30 days of the date of an open meeting at which the alleged violation occurs. If the alleged violation occurred other than at an open meeting, the challenge must be made within 30 days of the discovery of the action. All challenges must be filed within one year of the event in question in the county court of common pleas.

The court must award all or part of the attorney's fees and costs to the township if the court finds that the legal challenge was "frivolous" or "brought with no substantial justification." However, if the plaintiff in a Sunshine Law lawsuit proves that the township violated the law "willfully" or with "wanton disregard," the court must award all or part of the attorney's fees and costs to the prevailing party.



SAMPLE **Public Comment Policy**

TOWNSHIPS are encouraged to create written policies for the conduct of public meetings, including provisions for a public comment period. The Sunshine Law requires townships to provide a "reasonable opportunity" for public comment at each advertised regular and special meeting.

A written policy spelling out when and how long a comment period will be held is a township's best defense against any legal challenge for failing to allow public comment as required by law. Townships should consult their solicitors when writing a policy.

Under Section 710 of the Sunshine Law, townships may adopt rules and regulations and establish reasonable criteria to ensure that meetings are orderly and productive. First, the board of supervisors, which has discretion to make decisions about the meeting format and conduct, should establish an agenda and an order of business.

Next, the supervisors should determine how long the public comment period will be *(such as 15 minutes, 30 minutes, or an hour)*. Townships should be sure to provide enough time so that members of the public have a "reasonable" opportunity to comment and that the means for making public comment are "reasonably" accessible to citizens and taxpayers.

Section 710.1 specifically defines the "public" that must be allowed to speak during the public comment period as "residents and taxpayers" of the township. Under this definition, townships may exclude others if they so choose.

In addition to establishing a reasonable time limit for the public comment period, townships may establish the following rules for the conduct of the comment period:

▶ Require residents and taxpayers to identify themselves by name and address before speaking.

▶ Ask those who want to address the board to sign in when they arrive so the secretary has the correct spelling of their names for preparing the minutes. *(Note that townships may not compel a person to sign his name and give his address.)*

▶ Limit the time that each person may speak if a large number of people want to address the board on a topic.

▶ Ask those who want to address the board about a specific issue and do not want to be included in the public comment period to notify the township in advance so the item can be included on the agenda.

In addition to these requirements, townships are required to provide an opportunity for public comment before taking official action at a public meeting. To satisfy this requirement, townships may hold the comment period before each official action or at the beginning of the meeting before any action is taken.

The following sample resolution is one approach for adopting a policy for public comment. Townships should consult their solicitor to develop a procedure that best meets their needs and practices.

RESOLVED, That all regular and special meetings of _____Township shall be conducted according to the following order of business:

Call to Order
Pledge of Allegiance
Public Comment
(must be held before taking official action)
Minutes of Previous Meeting
Correspondence
Administrative Actions
Staff Reports
Old Business
New Business
Adjournment

FURTHER RESOLVED, That the board of supervisors may, from time to time, direct the publication and posting of the agenda for any regular or special meeting prior to such meeting in such manner as the board may determine by resolution. *(Since posting of an agenda is not required by law, this section is provided as a suggestion.)*

FURTHER RESOLVED, That public comment at regular or special meetings shall be governed by the following rules and regulations:

1) A period of public comment shall be held at each meeting either before each official action is taken by the board or at the beginning of the meeting.

2) The chairman of the board shall preside over the public comment period and may within his discretion:

a) Recognize individuals wishing to offer comment.
b) Require identification of such persons.
c) Allocate available time among individuals wishing to comment.
d) Rule out of order scandalous, impertinent, and redundant comment or any comment the discernible purpose of which is to disrupt or prevent the conduct of the business of the meeting.

3) The time allocated for the public comment period at each meeting shall be _____ minutes.

4) If there is not enough time for public comment at a meeting, the board of supervisors, at its discretion, may defer the public comment period to a meeting held before the next regular or special meeting or until the next regular or special meeting.

Tips for Better Meetings

Holding Productive Meetings

Meetings are an essential part of the local government process because they provide an open, public forum in which township officials and local residents can express their ideas and concerns, address current problems and issues, and work together to improve the community.

Township meetings also provide citizens with a chance to take a more active role in their community and see their elected officials making decisions and establishing policy. A township meeting can be productive and informative if the board of supervisors prepares for the meeting, sets goals, maintains order, and accomplishes objectives.

Following are some tips for developing a township policy to make your meetings more informative and productive.

Before the Meeting

1) To avoid last-minute confusion, **prepare an agenda** that will serve as a general outline of what you expect to cover during the meeting.

2) **Give copies of the agenda** to board members several days before the scheduled meeting so they have time to review the items on the agenda.

3) **Distribute copies of the agenda to the public and the local news media** before the meeting so they will be able to ask questions and prepare comments.

During the Meeting

1) **Ask anyone who wants to address the board to sign in** when they arrive at the meeting so that the secretary has the correct spelling of their names for preparing the minutes. *(Note that townships may not compel a person to sign his or her name or give an address.)*

2) **Require residents and taxpayers to identify themselves** by name and address before speaking.

3) **Set specified time limits** for each speaker and adhere to those guidelines. This gives everyone a chance to speak and ensures that all issues on the agenda will be covered.

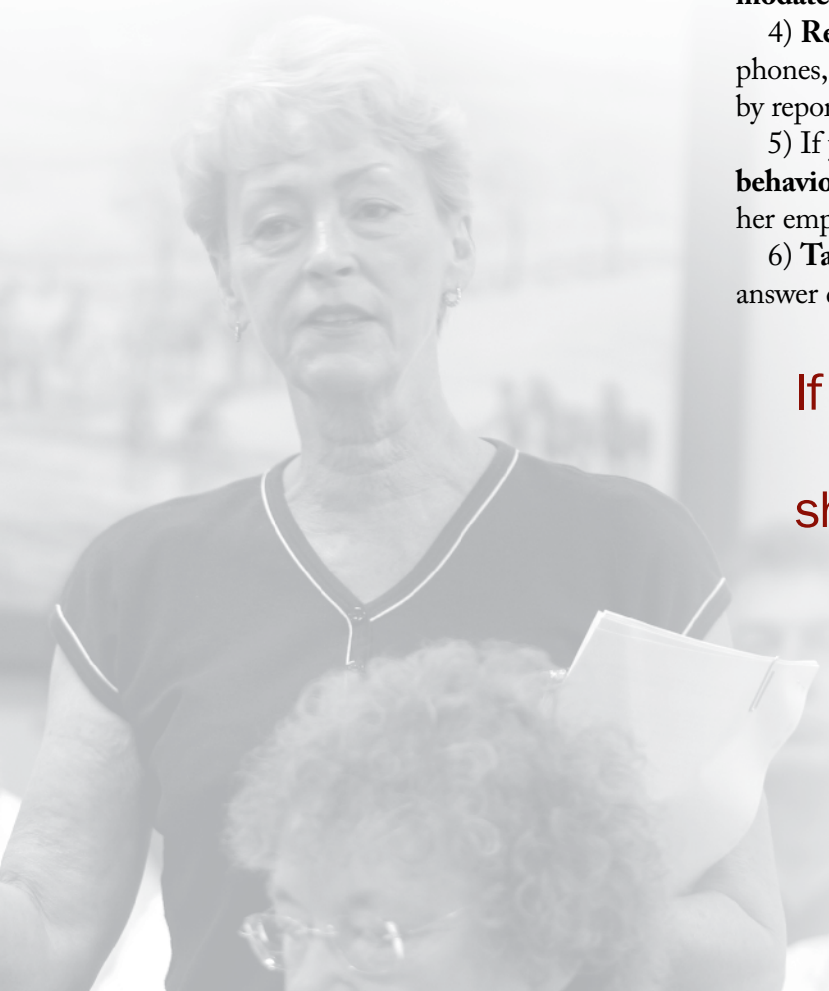
4) If a particularly large group wants to address the board, **have the group designate a spokesperson.** This cuts down on time and keeps the meeting organized.

5) **If spectators become disruptive,** the chairman of the board should take charge immediately and restore order. The chairman is also responsible for making sure speakers adhere to time limits and do not stray from the issues being discussed.

6) During the meeting, the supervisors should conduct themselves in **a professional, businesslike manner,** even if spectators become disruptive. Remember that township meetings are one of the few times residents see their supervisors in a professional atmosphere.

7) **Maintain cooperative, rather than adversarial, relationships** with your constituents and be sympathetic to their problems and concerns. This will promote better communication and enhance the township's image.

8) **Don't avoid answering questions** during a township meeting. However, if you don't know the answer to a question, don't be afraid to say so. Explain that you need to do more research and let residents know when you or someone from the township will get back to them with the necessary information.



Minutes

1) **Take accurate minutes** of each meeting. The minutes serve as the only formal documentation of the meeting and may be referred to later if any questions or problems arise.

2) **Include in the minutes** the date, time, and place of the meeting; the names of board members present; the substance of all official actions; a record, by individual board member, of the roll call votes taken; and the names of all citizens who appeared officially, along with the subject of their testimony.

Working with the Media

1) **Get to know the reporters** who cover your township meetings and provide them with any background information they need, including an agenda.

2) If there is no regular reporter who covers township meetings, call the paper and **ask the editor to assign one if possible.**

3) If you expect a large turnout from the public and the local media, arrange to hold the meeting at a site that is big enough to **accommodate everyone comfortably.**

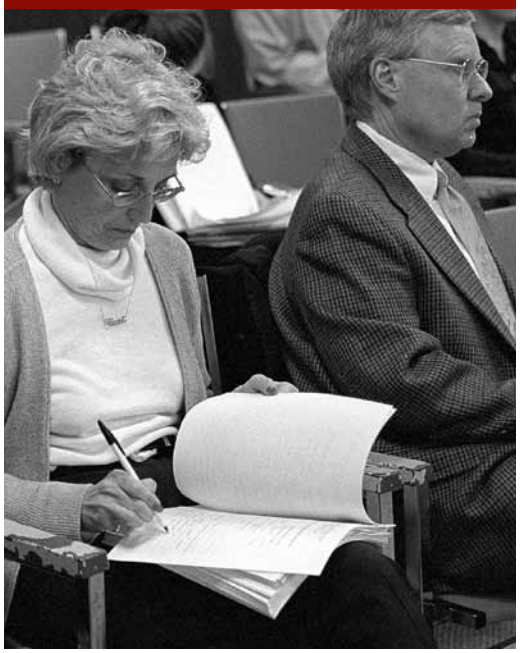
4) **Reserve enough space** for the microphones, cameras, and other equipment brought by reporters to cover meetings.

5) If you have **complaints about a reporter's behavior** during a township meeting, let his or her employer know your concerns.

6) **Talk to the reporter after the meeting** to answer questions and clarify information.

If spectators become disruptive, the chairman of the board should take charge immediately and restore order.

The Text of the Sunshine Law



CHAPTER 7 OF TITLE 65 OF THE PENNSYLVANIA CONSOLIDATED STATUTES

OPEN MEETINGS

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

Section 701. Short Title of Chapter

This chapter shall be known and may be cited as the Sunshine Act.

Section 702. Legislative Findings and Declaration.

(a) Findings. — The General Assembly finds that the right of the public to be present at all meetings of agencies, and to witness the deliberation, policy formulation and decision making of agencies, is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

(b) Declarations. — The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.

Section 703. Definitions.

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

"Administrative action." The execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency. The term does not, however, include the deliberation of agency business.

"Agency." The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the Executive Branch of the government of this Commonwealth, including the Governor's Cabinet when meeting on official policymaking business, any board, council, authority or commission of the Commonwealth or of any political subdivision of the Commonwealth or any state, municipal, township or school authority, school board, school governing body, commission, the boards of trustees of all state-aided colleges and universities, the councils of trustees of all state-owned colleges and universities, the boards of trustees of all state-related universities and all community colleges, or similar organizations created by or pursuant to a statute which declares in substance that the organization performs or has for its purpose the performance of an essential governmental function and through the joint action of its members exercises governmental authority and takes official action.

The term does not include a caucus nor a meeting of an ethics committee created under rules of the Senate or House of Representatives.

The General Assembly finds that ... secrecy in public affairs undermines the faith of the public in government.

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public.

"Agency business." The framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise, or the adjudication of rights, duties and responsibilities, but not including administrative action.

"Caucus." A gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action in the General Assembly.

"Conference." Any training program or seminar, or any session arranged by state or federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.

"Deliberation." The discussion of agency business held for the purpose of making a decision.

"Emergency meeting." A meeting called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

"Executive session." A meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting.

"Litigation." Any pending, proposed or current action or matter subject to appeal before a court of law or administrative adjudicative body, the decision of which may be appealed to a court of law.

"Meeting." Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

"Official action."

(1) Recommendations made by an agency pursuant to statute, ordinance or executive order.

(2) The establishment of policy by an agency.

(3) The decisions on agency business made by an agency.

(4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

"Public notice."

(1) For a meeting:

(i) Publication of notice of the place, date and time of a meeting in a newspaper of general circulation, as defined by 45 Pa.C.S. § 101 (relating to definitions), which is published and circulated in the political subdivision where the meeting will be held, or in a newspaper of general circulation which has a bona fide paid circulation in the political subdivision equal to or greater than any newspaper published in the political subdivision.

(ii) Posting a notice of the place, date and time of a meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(iii) Giving notice to parties under section 709(c).

(2) For a recessed or re-convened meeting:

(i) Posting a notice of the place, date and time of the meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(ii) Giving notice to parties under section 709(c).

"Special meeting." A meeting scheduled by an agency after the agency's regular schedule of meetings has been established.

Section 704. Open Meetings.

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707, 708 or 712.

Section 705. Recording of Votes.

In all meetings of agencies, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of roll call votes, recorded.

Section 706. Minutes Of Meetings, Public Records, and Recording of Meetings.

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

(1) The date, time and place of the meeting.

(2) The names of members present.

(3) The substance of all official actions, and a record by individual member of the roll call votes taken.

(4) The names of all citizens who appeared officially and the subject of their testimony.

Section 707. Exceptions to Open Meetings.

(a) Executive session. — An agency may hold an executive session under section 708.

(b) Conference. — An agency is authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference.

(c) Certain working sessions. — Boards of auditors may conduct working sessions not open to the public for the purpose of examining, analyzing, discussing, and deliberating the various accounts and records with respect to which such boards are responsible, so long as official action of a board with respect to such records and accounts is taken at a meeting open to the public and subject to the provisions of this chapter.

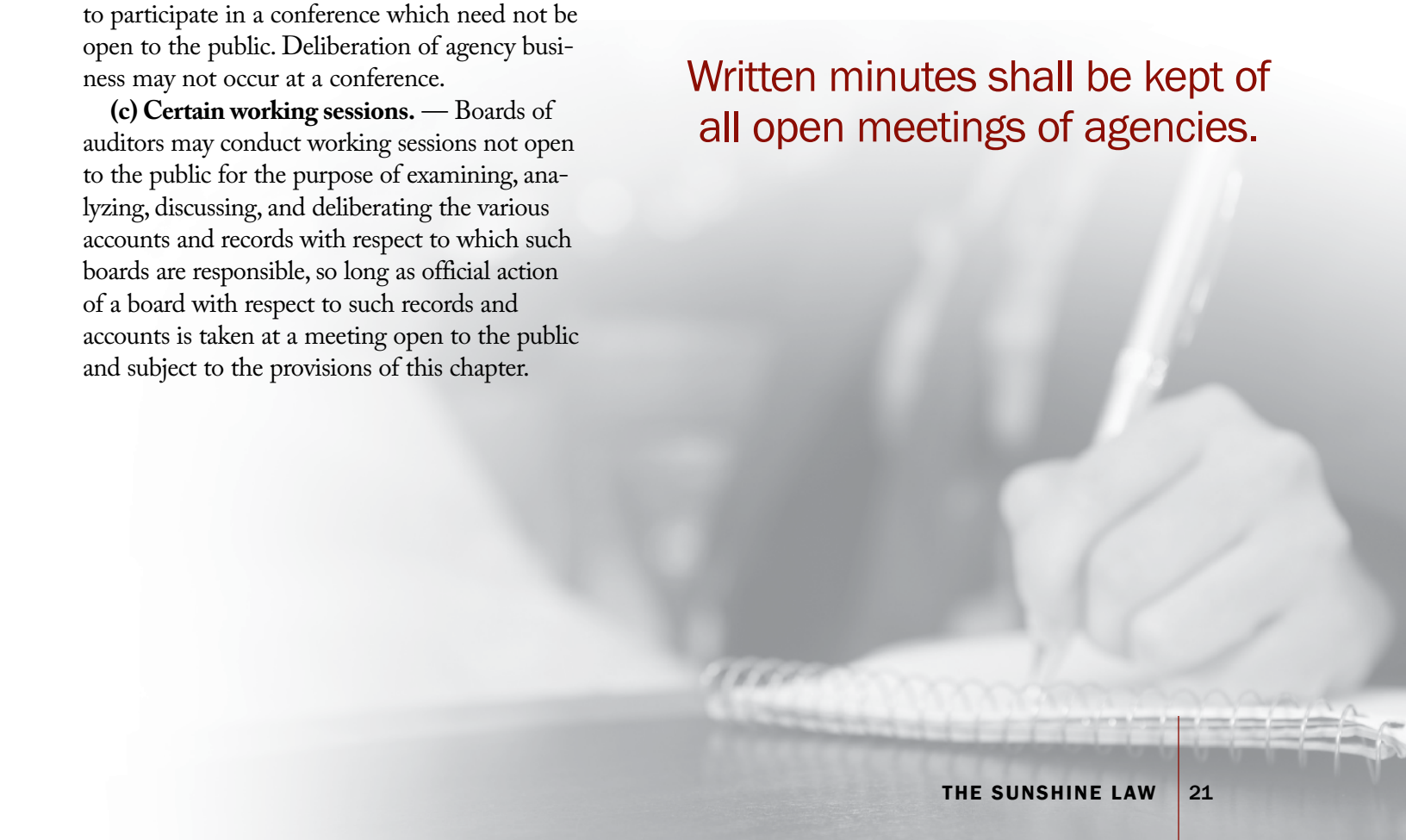
Section 708. Executive Sessions.

(a) Purpose. — An agency may hold an executive session for one or more of the following reasons:

(1) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting.

The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 of the Pennsylvania Consolidated Statutes *(relating to administrative law and procedure)*. The provisions of this paragraph shall not apply to any meeting involving the appointment or selection of any person to fill a vacancy in any elected office.

Written minutes shall be kept of all open meetings of agencies.



(2) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.

(3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.

(4) To consult with its attorney or other professional adviser regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.

(5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.

Public notice is not required in the case of an emergency meeting or a conference.

(6) For duly constituted committees of a board or council of trustees of a state-owned, state-aided or state-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

(b) Procedure. — The executive session may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.

(c) Limitation. — Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 707 shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 704.

Section 709. Public Notice.

(a) Meetings. — An agency shall give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of the meeting and shall give public notice of the schedule of its remaining regular meetings.

An agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice. Public notice is not required in the case of an emergency meeting or a conference.

Professional licensing boards within the Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth shall include in the public notice each matter involving a proposal to revoke, suspend or restrict a license.

(b) Notice. — With respect to any provision of this chapter that requires public notice to be given by a certain date, the agency, to satisfy its legal obligation, must give the notice in time to allow it to be published or circulated within the political subdivision where the principal office of the agency is located or the meeting will occur before the date of the specified meeting.

(c) Copies. — In addition to the public notice required by this section, the agency holding a meeting shall supply, upon request, copies of the public notice thereof to any newspaper of general circulation in the political subdivision in which the meeting will be held, to any radio or television station which regularly broadcasts into the political subdivision, and to any interested parties if the newspaper, station or party provides the agency with a stamped, self-addressed envelope prior to the meeting.

(d) Meetings of General Assembly in Capitol Complex. — Notwithstanding any provision of this section to the contrary, in case of sessions of the General Assembly, all meetings of legislative committees held within the Capitol Complex where bills are considered, including conference committees, all legislative hearings held within the Capitol Complex where testimony is taken, and all meetings of legislative commissions held within the Capitol Complex, the requirement for public notice thereof shall be complied with if, not later than the preceding day:

(1) The supervisor of the newsroom of the State Capitol Building in Harrisburg is supplied for distribution to the members of the Pennsylvania Legislative Correspondents Association with a minimum of 30 copies of the notice of the date, time and place of each session, meeting or hearing.

(2) There is a posting of the copy of the notice at public places within the Main Capitol Building designated by the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(e) Announcement. — Notwithstanding any provision of this act to the contrary, committees may be called into session in accordance with the provisions of the Rules of the Senate or the House of Representatives and an announcement by the presiding officer of the Senate or the House of Representatives. The announcement shall be made in open session of the Senate or the House of Representatives.

Any person has the right to raise an objection at any time to a perceived violation of this act.

Section 710. Rules and Regulations for Conduct of Meetings.

Nothing in this act shall prohibit the agency from adopting by official action the rules and regulations necessary for the conduct of its meetings and the maintenance of order. The rules and regulations shall not be made to violate the intent of this chapter

Section 710.1. Public Participation.

(a) General rule. — Except as provided in subsection (d), the board or council of a political subdivision, or of an authority created by a political subdivision, shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision, or for both, to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action. The board or council has the option to accept all public comment at the beginning of the meeting.

If the board or council determines that there is not sufficient time at a meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority

created by a political subdivision, or for both to comment, the board or council may defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.

(b) Limitation on judicial relief. — If a board or council of a political subdivision, or an authority created by a political subdivision, has complied with the provisions of subsection (a), the judicial relief under section 713 shall not be available on a specific action solely on the basis of lack of comment on that action.

(c) Objection. — Any person has the right to raise an objection at any time to a perceived violation of this chapter at any meeting of a board or council of a political subdivision or an authority created by a political subdivision.

(d) Exception. — The board or council of a political subdivision or of an authority created by a political subdivision which had, before January 1, 1993, established a practice or policy of holding special meetings solely for the purpose of public comment in advance of advertised regular meetings shall be exempt from the provisions of subsection (a).

Section 711. Use of Equipment During Meetings.

(a) Recording devices. — Except as provided in subsection (b), a person attending a meeting of an agency shall have the right to use recording devices to record all the proceedings. Nothing in this section shall prohibit the agency from adopting and enforcing reasonable rules for their use under section 710.

A person attending a meeting of an agency shall have the right to use recording devices to record all the proceedings.

(b) Rules of the Senate and House of Representatives. — The Senate and House of Representatives may adopt rules governing the recording or broadcast of their sessions and meetings and hearings of committees.

Section 712. General Assembly Meetings Covered.

Notwithstanding any other provision, for the purpose of this act, meetings of the General Assembly which are covered are as follows: All meetings of committees where bills are considered, all hearings where testimony is taken, and all sessions of the Senate and the House of Representatives. Not included in the intent of this chapter are caucuses or meetings of any ethics committee created pursuant to the Rules of the Senate or the House of Representatives.

Section 713. Business Transacted at Unauthorized Meeting Void.

A legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting.

The court may enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this chapter, it may, in its discretion, find that any or all official action taken at the meeting shall be invalid.

Should the court determine that the meeting met the requirements of this chapter, all official

action taken at the meeting shall be fully effective.

Section 714. Penalty.

(a) Fines and costs. — Any member of any agency who participates in a meeting with the intent and purpose by that member of violating this chapter commits a summary offense and shall, upon conviction, be sentenced to pay:

(1) For a first offense, the costs of prosecution plus a fine of at least $100 and, in the discretion of the sentencing authority, not more than $1,000.

(2) For a second or subsequent offense, the costs of prosecution plus a fine of at least $500 and, in the discretion of the sentencing authority, not more than $2,000.

(b) Payment. — An agency shall not make a payment on behalf of or reimburse a member of an agency for a fine or cost resulting from the member's violation of this section.

(Amended by Act 56 of 2011)

Section 714.1 Attorney Fees.

If the court determines that an agency willfully or with wanton disregard violated a provision of this chapter, in whole or in part, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.

If the court finds that the legal challenge was of a frivolous nature or was brought with no substantial justification, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.

Section 715. Jurisdiction and Venue of Judicial Proceedings.

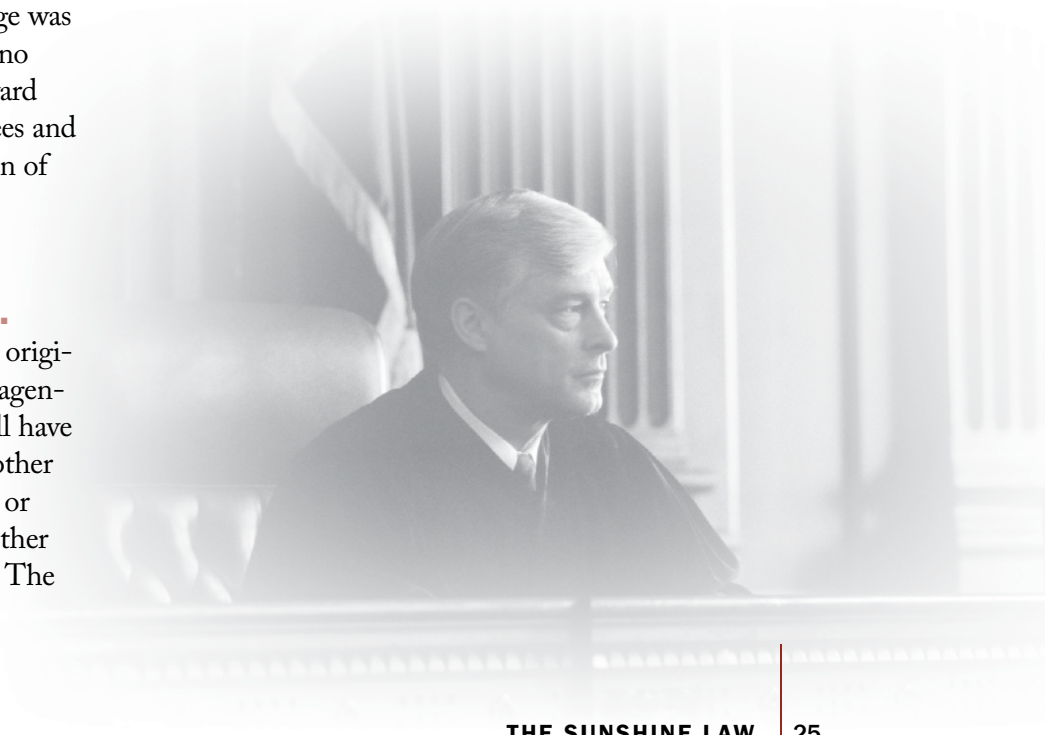
The Commonwealth Court shall have original jurisdiction of actions involving state agencies, and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this chapter, by injunction or other remedy deemed appropriate by the court. The action may be brought by any person where the agency whose act is complained of is located or where the act complained of occurred.

Section 716. Confidentiality.

All acts and parts of acts are repealed insofar as they are inconsistent with this chapter, excepting those statutes which specifically provide for the confidentiality of information.

Those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the investigation of possible or certain violations of the law and quasi-judicial deliberations, shall not fall within the scope of this act.

If the court finds that the legal challenge was ... frivolous ... or was brought with no substantial justification, the court shall award ... reasonable attorney fees and costs of litigation.



Sunshine Law Related Court Cases *(through 2013)*

As with any law of this nature, disagreements over the interpretation of various provisions of the Sunshine Act have resulted in litigation and subsequent court decisions that offer further guidance to those who must comply with the law.

Following is a summary of significant, but not necessarily all, court decisions that have been handed down on the Sunshine Act from 1993 through 2013. The cases are listed according to the section of the law most referenced in the decision, if any.

Sunshine Act – General

Kennedy v. Upper Milford Tp. Zoning Hearing Bd.,
834 A.2d 1104 (Pa. 2003)

Citizens in this case alleged that the township's zoning hearing board had violated the Sunshine Act when the members recessed during a hearing on a Turnpike Commission application to increase the height of a communications tower on its property.

The Lehigh County Court of Common Pleas ruled in favor of the zoning board and dismissed the action. The Commonwealth Court reversed that decision when the citizens appealed.

However, on appeal to the state Supreme Court, the decision in favor of the zoning hearing board was restored. The Supreme Court ruled that, because of the nature and sensitivity of zoning board deliberations, certain proceedings are exempt from the open meeting provisions of the Sunshine Act and can be held in private.

The court concluded that a zoning hearing board is, in many respects, "an agency characterized predominantly by judicial characteristics and functions" and thus, "it is particularly appropriate for zoning boards to deliberate privately."

Sunshine Act – General

Weeast v. Borough of Wind Gap,
621 A.2d 1074 (Pa. Cmwlth. 1993)

The Commonwealth Court rejected, as against the intent of the Sunshine Act and against public policy, a borough's attempt to invalidate a settlement agreement on the grounds that it violated the Sunshine Act.

The plaintiff sued the borough for damage caused by water run-off from borough property. Under a consent decree entered and approved by the trial court, the borough was required to pay the plaintiff damages and to re-direct the water flow away from the plaintiff's land.

The borough subsequently tried to invalidate the agreement, which formed the basis of the consent decree, arguing that since its insurance carrier's attorney negotiated the agreement and since the agreement was never ratified at an open meeting, it violated the Sunshine Act. The Commonwealth Court rejected this argument, stating that "allowing the borough to nullify its own agreements by invoking the Sunshine Act would give government agencies an escape hatch to renege on any agreements they do not wish to honor and would give them an incentive to violate the Sunshine Act in order to preserve such an escape hatch..."

In addition, the court found that the focus of any Sunshine Act challenge in this case should not be on the consent decree but rather on the borough's contract with the insurer. This latter agreement empowered the insurer's attorney to negotiate on behalf of the borough. Because this contract between the borough and its insurer was properly approved at public meetings, the borough did not demonstrate a Sunshine Act violation.

Section 710.1 – Public Participation

***Alekseev v. City Council of City of Philadelphia*, 607 Pa. 481 (2010)**

The Supreme Court ruled that agencies cannot delegate their obligation to permit public comment to other committees created or authorized by the agencies.

At issue was the Philadelphia City Council's policy prohibiting public attendees from commenting at its regularly scheduled meetings. The policy provided instead that committees that address bills prior to regularly scheduled meetings would permit public comment. The council asserted that its policy complied with Section 710.1(d), which provides for grandfathering of public comment policies established before January 1, 1993.

The Supreme Court ruled against the Philadelphia City Council. It held that "Section 710.1(d) plainly contemplates a pre-1993 practice by a board or council of entertaining public comments at its own special meetings, and not those of lesser committees." It further held that "simply because committees fall within the definition of 'agency' does not mean that they may be substituted for a particular body (a board or council) accorded a specific responsibility (entertaining public commentary)" under the Sunshine Act. The court found no authorization in the Sunshine Act for that type of delegation by boards or councils.

Because the board simply announced the compromise and took the vote, rather than accept public comment on the compromise, a violation of the Sunshine Law had occurred.

Ad hoc committees ... empanelled for the purpose of furnishing information and recommendations to governing or decision-making entities are not subject to the open meeting law unless they have actual ... decision-making authority.

Section 703 – Definitions – Meeting

***Mazur v. Trinity Area School Dist.*, 926 A.2d 1260 (Pa. Cmwlth. 2007)**

In this case challenging the use of tax increment financing for a development project, the plaintiffs argued that a township supervisor had violated the Sunshine Act by casting his vote in favor of the tax proposal by telephone.

The plaintiffs also said the supervisor's vote should not have been allowed in the first place because he had missed several previous meetings of the board of supervisors.

The Commonwealth Court agreed with the trial court that the board of supervisors had not violated the Sunshine Act.

First, the court said, the law defines a meeting as a gathering that the members of an agency attend or *participate in,* thus making participation by telephone a valid option.

In response to the plaintiffs' other argument, the court found that the supervisor in question had attended a meeting where the taxing proposal was discussed in detail. He was absent from the next meeting because he was hospitalized, but the other supervisors assured, on the record, that he would be kept abreast of the discussion so he could make an informed decision.

Section 703 – Definitions – Agency

***Ristau v. Casey, 647 A.2d 642* (Pa. Cmwlth. 1994)**

This case arose out of the governor's attempt to fill certain judicial vacancies. The applicable law requires the governor to nominate his selection to the Senate. The governor and his appointed five-member nominating commission met in private to deliberate about candidates for the position. The plaintiff brought an action, claiming that both the governor and the commission had violated the Sunshine Act in doing so.

The Commonwealth Court held that the word "agency" in the statute referred to a group of individuals. Therefore, a single individual, such as the governor, could not be an agency within the meaning of the act.

The court similarly held that the commission also was not an agency. Acknowledging that the definitional standards were less clear when applied to the commission, the court held that the commission was not an agency within the meaning of the act and, therefore, was not subject to the requirements of the act.

Several factors guided the court's decision. First, the commission was not created by or pursuant to statute. Second, the commission did not perform a predefined essential governmental function, and the governor was not bound to accept the commission's recommendations. Third, the commission did not exercise any governmental authority. The commission's nature as a "temporary, limited-purpose, advisory board without authority to make a binding recommendation" also was significant to the court.

The court made the following general statement: "The majority of other decisions have generally held that *ad hoc committees or citizens advisory committees empanelled for the purpose of furnishing information and recommendations* to governing or decision-making entities are not subject to the open meeting law unless they have actual, or de facto, decision-making authority."

The court did not expressly address the portion of the statute that includes within the defi-

nition of "agency" bodies that "render advice on matters of agency business."

Section 703 – Definitions – Agency

***Harristown Development Corp. v. Commonwealth, Dept. of General Services,* 614 A.2d 1128 (Pa. 1992)**

The Pennsylvania Supreme Court reversed an earlier Commonwealth Court decision and ruled that the Harristown Development Corporation, a nonprofit organization that receives more than $1.5 million in annual rental revenues from the commonwealth, was an "agency" within the definition set forth in the Sunshine Act.

HDC, which was involved in the redevelopment of downtown Harrisburg, received $13 million in 1989 for rent from its real estate. Under Act 153 of 1988, nonprofit corporations that collect rents of more than $1.5 million per year from the commonwealth are "agencies for purposes of the Sunshine Act and the Right-to-Know Law." HDC put forth several arguments that it should not be deemed an agency merely because it did business with the commonwealth.

The Supreme Court rejected all of HDC's arguments and said that "...Harristown is an agency if the General Assembly says it is... and the fact that Harristown does not meet the original definition of agency as that term appears in the Sunshine Act and the Right-to-Know Law is of no consequence, for Act 153 changes the definition of agency in those acts."

Section 703 – Definitions – Agency

***Gowombeck v. City of Reading,* 48 D.&C.3d 324 (Berks C.C.P. 1988)**

The trial court held that an emergency ambulance service review committee whose members are appointed by city council is not an "agency" as defined in the act because it is not a committee composed of members of city council, and thus, the committee's meetings are not subject to the law.

Section 703 of the Sunshine Act defines an "agency" as "the body and all committees thereof authorized by the body to take official action or render advice on matters of agency business." Thus, the issue was whether an emergency ambulance service review committee whose members are appointed by city council is a "committee thereof." The court concluded that "committee thereof" means a committee composed of the "body."

Here, the body was the city council, and because the committee was not composed of any members of the city council, it was not an "agency" as defined in the Sunshine Act. Therefore, the committee was not subject to the law.

Section 703 – Definitions – Agency Business and Deliberations

Section 704 – Open Meetings

***Smith v. Township of Richmond,* ___ A.3d ___, 2013 WL 6598713 (Pa. Dec. 16, 2013)**

The Supreme Court held that closed-door fact-finding meetings conducted by a quorum of agency members did not violate the Sunshine Act because the meetings were held for informational purposes and did not involve deliberations.

In an effort to educate a new supervisor and solicitor about pending litigation involving the possible expansion of a quarry, the board conducted four meetings with other parties, including the quarry owner, neighboring municipalities, and a citizens group. At the next public meeting, the solicitor explained that the board did not deliberate on, conduct business, or make any decisions during those meetings. The new supervisor and solicitor

The law does not expressly permit the courts to invalidate official action taken after a private meeting held in violation of the law.

later met with the quarry's representatives to discuss a possible settlement.

Just prior to the board's next regularly scheduled meeting, the quarry delivered a proposed settlement agreement, which the solicitor read into the record after the board met in executive session. Following public comment and debate, the board voted to accept the settlement agreement.

Smith filed suit, claiming that the meetings violated the Sunshine Act because they were closed to the public and a quorum deliberated on official business. Smith contended that the board had already decided to settle and scheduled the meetings merely to develop settlement terms.

The Commonwealth Court found that a narrow and literal reading of the term "deliberation" in the Sunshine Act would preclude public officials from engaging in collaborative fact-finding, that "there is a substantial difference between discussion and deliberation," and that "deliberation" does not include any and all discussions. Here, the supervisors were "collecting information to allow them to make an informed decision *at some later time.*" (emphasis in original)

The Supreme Court allowed appeal to resolve the issue of whether the Sunshine Act's definition of "deliberations" is triggered where an agency meets with third parties, including adverse parties in litigation, "to obtain information designed to help the agency make a more informed decision with regard to settling the ongoing litigation."

The Supreme Court found that the Sunshine Act does not expressly preclude "private information gathering as a collective effort by members of an agency, including by a quorum." It also held that "[g]atherings held solely for the purpose of collecting information or educating agency members about an issue" are not held for the purpose of making a decision, even where the information obtained may later assist the agency in taking official action. The Supreme Court stated that the General Assembly, by requiring open meetings when held for the specific purpose of "making a decision," left open "closed-door discussions for other purposes."

However, while the court noted the "practical benefit" of having closed-door meetings, such as those held in this case, when an agency does hold such meetings, "skepticism among the general public is not unreasonable" and that "the agency incurs the risk that citizens will challenge the propriety of its actions."

The court noted that the parties challenging the board's action had actual notice of the alleged violation more than 30 days before the initiation of the challenge. The challenge therefore was untimely.

Section 703 – Definitions – Agency Business and Deliberations

Section 704 – Open Meetings

Section 713 – Business Transacted at Unauthorized Meeting

***Ackerman v. Upper Mt. Bethel Tp.*, 567 A.2d 1116 (Pa. Cmwlth. 1989)**

The court held that a private conference among three members of the township board of supervisors about an amendment to the zoning ordinance was a discussion of agency business and constituted deliberations within the meaning of the act. Therefore, the conference was a "closed meeting" in violation of the

Sunshine Act.

The court also held that the trial court did not abuse its discretion in refusing to set aside a zoning amendment passed by the supervisors even though the board held a conference that violated the act. The law does not expressly permit the courts to invalidate official action taken after a private meeting held in violation of the law.

An alleged violation of the Sunshine Law's requirement that public agencies conduct official actions and deliberations at public meetings was cured by a subsequent public meeting.

Section 703 – Definitions – Conference

Section 707(b) – Conference Exception

Times Leader v. Dallas School Dist.,
49 D.&C.3d 329 (Luzerne C.C.P. 1988)

A county court held that a proposed meeting between a consultant and members of a school board to review a report that was approved at a public meeting and paid for with public funds is not a "conference" as defined in the Sunshine Act. Therefore, public notice of the meeting must be given, and the meeting must be open to the public.

A "conference," as defined in Section 703 of the act, includes only conferences for "agency members." And since a consultant is not an "agency member" *(see Easton on page 41),* the proposed meeting between the consultant and members of the school board did not fall within the "conference" exception to open meetings contained in Section 707(b) of the act.

Section 703 – Definitions – Deliberation

Section 709 – Public Notice

Bradford Area Educ. Ass'n v. Bradford Area School Dist.,
572 A.2d 1314 (Pa. Cmwlth. 1990)

Here, it was alleged that the school board violated the Sunshine Act when an administrative reorganization plan was considered and discussed without the public notice required by the Sunshine Act.

On January 19, 1988, the board held an executive session to discuss personnel matters. On January 25, 1988, at a private meeting for another purpose, the school superintendent clarified how he intended to meet with the affected staff.

Although questions were raised at the meetings, the school district contended that there was no deliberation within the meaning of the act, which defines the term "deliberation" as "the discussion of agency business held for the purpose of making a decision."

The trial court concluded that the association had not met its burden of proof that either official action took place or official action was deliberated at the meetings.

The Commonwealth Court held that the trial court did not abuse its discretion in refusing to set aside the school board's decision to adopt a reorganization plan, even if the board violated the act. The board held extensive public meetings in which the public voiced objections and support for the plan. Additionally, officers and members of the education association, who had challenged the plan, met several times with the board and commented at length on the proposal.

The school district contended that the suit was not filed within the time period prescribed by the act. The only meetings that were alleged to have violated the act occurred on January 19 and 25, 1988. The suit was not filed until May 12, 1988. The act provides: "A legal challenge under this act shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which the

The Sunshine Act does not require agency members to inquire, question, and learn about agency issues only at an open meeting.

act was violated."

The court noted that the parties challenging the board's action had actual notice of the alleged violation more than 30 days before the initiation of the challenge. The challenge therefore was untimely.

Section 703 – Definitions – Meeting

Section 712 – General Assembly Meetings Covered

Pennsylvania Legislative Correspondents' Ass'n v. Senate of Pennsylvania,
537 A.2d 96 (Pa. Cmwlth. 1988)

The Commonwealth Court held that unofficial "closed" gatherings of state legislators did not constitute "meetings" within the meaning of the Sunshine Act. In this case, it was alleged that several state legislators met to discuss certain bills before official committees were formed. As evidence of this, the Pennsylvania Legislative Correspondents' Association cited recommendations given by the official committee within minutes after its formation. The court found that these closed sessions were not "de facto meetings" and thus were not a violation of the Sunshine Act.

Section 712 addresses General Assembly meetings and includes "all meetings of committees where bills are considered..." In interpreting this language, the court determined that the informal meetings did not fall within the definition. "A prerequisite to the opening of a General Assembly conference committee meeting is that the committee be properly established and authorized to work on its designated subject." Accordingly, the challenge to the validity of the cited bills was dismissed at the summary judgment stage.

Section 703 – Definitions – Official Action

Section 704 – Open Meetings

Association of Community Organizations for Reform Now v. SEPTA, 789 A.2d 811
(Pa. Cmwlth. 2002)

The Commonwealth Court ruled that an alleged violation of the Sunshine Act's requirement that public agencies conduct official actions and deliberations at public meetings was cured by a subsequent public meeting.

In this case, SEPTA had held public hearings on a fare increase. The hearing examiners prepared a record of the hearings and issued a report that the board of directors was to consider at a public meeting. Before the meeting, the board met privately with SEPTA staff to prepare alternative fare scenarios, which were announced for the first time at the scheduled public meeting. The board allowed public comment at the meeting but eventually adopted a fare increase that differed from any that had been proposed and discussed at a previous public hearing.

On appeal, SEPTA contended that the board's discussions with employees were distinguishable from the *ex parte* meeting cited in *Ackerman v. Upper Mt. Bethel Tp.,* 567 A.2d 1116 (Pa. Cmwlth. 1989). Therefore, SEPTA contended, the talks did not violate the rule against private deliberation. SEPTA also argued that *Ackerman* and subsequent cases have held that official action taken at a later open meeting cures a prior violation of the Sunshine Act. The Commonwealth Court did not address the first issue but agreed with SEPTA on the second, finding that any alleged violation of law was cured by the subsequent public meeting.

The SEPTA decision contrasts significantly with the ruling in *Kennedy v. Upper Milford Tp. Zoning Hearing Bd.,* 779 A.2d 1257 (Pa.

Cmwlth. 2001). In *Kennedy,* the court found that the zoning hearing board not only deliberated but made a decision at a nonpublic meeting. Further, the violation was not cured by a public vote since the board did not accept public debate or comment at the subsequent public hearing. *(See pages 26 and 37 for more details on the Kennedy case.)*

Section 703 – Definitions – Official Action

Section 704 – Open Meetings

***Belitskus v. Hamlin Tp.,* 764 A.2d 669 (Pa. Cmwlth. 2000)**

In this case, a resident claimed that township supervisors violated the Sunshine Act when they sent a letter of recommendation and planned a joint meeting with other local agencies without discussing these actions at a public meeting.

The letter of recommendation was for an individual seeking reappointment to the county solid waste authority. Additionally, the supervisors planned a meeting with the local water association and county redevelopment authority.

In response to the resident's complaint, the supervisors filed preliminary objections, maintaining that these activities did not constitute official actions. The McKean County Court of Common Pleas agreed. The plaintiff then appealed to the Commonwealth Court, which affirmed the lower court's ruling.

The Sunshine Act provides that "official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under Section 707 *(relating to exceptions to open meetings)*, 708 *(relating to executive sessions)*, or 712 *(relating to General Assembly meetings)*."

The law defines an official action as: "1) recommendations made by an agency pursuant to statute, ordinance, or executive order; 2) the establishment of policy by an agency; 3) the decisions on agency business made by an agency; and 4) the vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report, or order."

The Commonwealth Court did not examine the merits of whether a recommendation made outside an open meeting violates the Sunshine Act. Instead, the court found that the plaintiff failed to file the action in a timely manner.

Under the law, challenges must be brought within 30 days of a meeting or within 30 days of discovering the alleged violation. In this case, the plaintiff learned about the letter of recommendation while reading a June 29, 1999, newspaper article. However, he did not file his complaint until August 10, 1999, which is beyond the 30-day time limit. Therefore, the court barred the action and did not discuss whether its decision would have been different had the complaint been filed within the 30 days.

Concerning the scheduling of a meeting with the water association and the redevelopment authority, the court agreed with the trial court. "In setting up the meeting and attending the meeting, the supervisors did not enact any law, policy, or regulation, did not create any liability under contract, and did not adjudicate any rights, duties, or responsibilities." Further, the court stressed that "the Sunshine Act does not require agency members to inquire, question, and learn about agency issues only at an open meeting."

This case highlights the Sunshine Act's emphasis on the need for local government officials to make all decisions at open meetings. Inquiring, learning, and scheduling do not fall into this category. However, once the level of fact gathering approaches preparation for a

The commission's recommendations were not automatically invalidated by the prior illegal meeting since the proposed changes to the township ordinance were discussed and voted on at the later public meeting.

There is a substantial difference between discussion and deliberation.

decision or framing of policy or regulations, an open meeting is required. There may be a thin line between the two. Although the instant case did not seem to be a close call, a municipality should err on the side of caution if there is a question about what is proper.

Section 704 – Open Meetings

***Perry v. Tioga County,* 694 A.2d 1176 (Pa. Cmwlth. 1997)**

In this case, an employee brought action against his employer, Tioga County, alleging a breach of his employment contract and wrongful discharge. Following negotiations, the employee accepted and signed a settlement agreement that the county had prepared and sent to him. The county changed its mind and refused to sign the agreement. The employee then asserted another breach of contract claim.

The county defended, citing its own violations of the Sunshine Act as a basis to invalidate the contract. The county argued that because the terms of the proposed agreement had not been approved in an open meeting, as required by the law, and because the solicitor was without express authority to offer settlement of the claim, no contract existed.

The Commonwealth Court held that the county could not raise its own violations as a defense; however, the court invalidated the contract anyway because the lack of signatures meant the document failed to meet the strict statutory requirements for public contracts.

Section 704 – Open Meetings

***Moore v. Township of Raccoon,* 625 A.2d 737 (Pa. Cmwlth. 1993)**

The Commonwealth Court ruled that a township planning commission violated the Sunshine Act when a majority of its members met privately in the home of one of its members to discuss a proposed junkyard ordinance. The private meeting constituted "deliberations," requiring conformity with the Sunshine Act.

However, a subsequent valid public meeting, at which the members of the commission voted to recommend proposed changes to the township supervisors, cured the defective meeting.

The court ruled that the commission's recommendations were not automatically invalidated by the prior illegal meeting since the proposed changes to the township ordinance were discussed and voted on at the later public meeting. The court held that the trial court had not abused its discretion in allowing the actions of the planning commission members to stand, despite the prior illegal meeting. The court upheld the trial court's determination that the valid open meeting removed the taint of the invalid closed meeting.

In affirming the lower court decision, the Commonwealth Court made the following two points:

1) Discretion lay with the lower court to determine the validity of action that did not meet the requirements of the Sunshine Act; and

2) Where a proper public meeting follows an improper private meeting, the legislature has provided no remedy other than summary proceedings against the individual members of the public agency.

Section 704 – Open Meetings

***Conners v. West Greene School Dist.,* 569 A.2d 978 (Pa. Cmwlth. 1989)**

Here, the appellant contended that the school district violated the Sunshine Act when it adopted its budget. Section 704 of the act provides that official action and deliberations by a quorum of the members of an agency must take place at a meeting open to the public unless closed under other applicable sections of the law. One of the statutory exceptions pertains to certain designated times when an agency may hold an executive session, but none applies to adopting a budget.

The appellant based her allegation on a

newspaper article that read: "A motion to cut the programs, however, first was defeated. Only after a brief recess, during which several board members grouped together apparently to discuss the matter, was the motion again introduced and approved."

The court stated that, with respect to this issue, the facts pled were not legally sufficient to permit the action to continue. Further, the court noted that, even if the board members did informally discuss the budget, it would not constitute a violation of law. There is a substantial difference between discussion and deliberation. A school board member is not foreclosed by the act from discussing and debating informally with others, including school board members, the pros and cons of particular proposals and matters that may be on the board's agenda.

The act does not prohibit a member from inquiring, questioning, and learning about the budget and other school issues outside a public meeting.

Section 704 – Open Meetings

***Smith v. Hanover Zoning Hearing Bd.*, 78 A.3d 1212 (Pa. Cmwlth. 2013)**

The Commonwealth Court ruled that a zoning hearing board did not violate the Sunshine Act even though its written decision explaining the denial of a permit application conflicted with the reasons provided during a public hearing.

A company sought permits to erect billboards in certain zoning districts where billboards are prohibited by the borough's zoning ordinance. After the borough's code enforcement officer refused to issue the permits, the company appealed and presented evidence to the zoning hearing board, which voted to deny the permit applications. The trial court affirmed.

One of the company's arguments before the Commonwealth Court was that the zoning hearing board violated the Sunshine Act by issuing a written decision that conflicted with the reasons stated by the board at the hearing.

The court held that the "Sunshine Act only governs the formal actions taken at public meetings and not the writing issued afterwards to explain the actions." It also held that there was no contradiction between the oral decision expressed by the board at the public hearing and its subsequent written decision. Instead, the written decision expanded on the board's reasons and took into account other arguments not previously discussed, but it did not undermine the oral statements at the hearing.

Section 704 – Open Meetings
Section 708 – Executive Sessions

***Trib Total Media, Inc. v. Highlands School Dist.*, 3 A.3d 695 (Pa. Cmwlth. 2010)**

The Commonwealth Court found that a school district violated the Sunshine Act when its school board permitted an opposing party to participate in an executive session called to discuss potential litigation with that party.

In this case, a school board announced at the end of a regular public meeting that it would

Because the decision was not transacted at a public meeting with the required public notice, the roadmaster's dismissal was void under the code.

conduct an executive session to discuss possible litigation relating to the tax assessment appeal of a local shopping center. It then invited the shopping center's owners to participate in the executive session but denied access to a newspaper reporter.

The newspaper filed a complaint in which it alleged that the school board violated the Sunshine Act by meeting privately with opposing litigants. The school board argued that the executive session was authorized by Section 708(a)(4). The trial court relied on Section 703 to dismiss the complaint, finding that the shopping center owners were proper attendees because they were necessary to carry out the purpose of the executive session.

The Commonwealth Court stated that Section 708(a) provides "only six narrow reasons for which an agency is permitted to conduct an executive session" and that agencies do not have broad discretion to independently determine when it is appropriate to exclude the public from meetings.

The court found that the school board violated the Sunshine Act when it took the meeting outside the scope of Section 708(a)(4) by inviting the shopping center's owners. Having them present destroyed the confidentiality of any communications between the board and its solicitor, which is the purpose of Section 708(a)(4). Instead, the court stated that the meeting appeared to provide the owners a "private audience" with the board or an "opportunity to lobby" the board.

In addition, the court found no support for the proposition that opposing parties are necessary participants in an executive session called for the permitted purpose of seeking legal advice, noting that "the presence of opposing parties would undermine the essential purpose of such a meeting."

The court described a vote within the meaning of the act as being one which "commits the agency to a course of conduct."

Section 704 – Open Meetings
Section 709 – Public Notice

***Sheetz, Inc. v. Phoenixville Borough Council,* 804 A. 2d 113 (Pa. Cmwlth. 2002)**

The Pennsylvania Commonwealth Court ruled that a borough council was not required to provide a written notice to Sheetz about its intent to vote on the company's conditional use permit application for a service station at an upcoming meeting.

The council subsequently denied Sheetz's request for the permit at the meeting.

In its decision, the Commonwealth Court clarified that since the borough council held a regular meeting, not a hearing, on the permit request, it was not obligated under either the Sunshine Act or Municipalities Planning Code to provide Sheetz with a written notice of the meeting. The court also held that Sheetz failed to establish that its permit application complied with the borough's zoning requirements.

Section 704 – Open Meetings
Section 711 – Use of Equipment During Meetings

***Harman v. Wetzel,* 766 F. Supp. 271 (E.D. Pa. 1991)**

A federal court found that a township zoning board meeting was a "public meeting" within

the meaning of the Sunshine Act. Therefore, the recording of statements by a landowner at the meeting, without his consent, did not violate the federal wiretap law.

In this case, a landowner challenged the township's refusal to allow the installation of steel septic tanks. At a public zoning board meeting, the session was recorded with a tape recorder in plain view. The landowner argued that the recording of the meeting was unlawful and violated federal wiretap laws.

The court, in rejecting this allegation, concluded that zoning board meetings were within the meaning of the definition of "public meetings" in the act. Since Section 711 specifically allows for the use of recording devices at public meetings, the landowner's allegation that the recording was unlawful was dismissed.

Section 704 – Open Meetings
Section 713 – Business Transacted at Unauthorized Meeting Void

***Thomas v. Township of Cherry,* 722 A.2d 1150 (Pa. Cmwlth. 1999)**

Two members of a three-member township board of supervisors met, without public notice or notice to the third member, and decided to dismiss a township roadmaster for insubordination.

A termination letter was sent to the roadmaster. The letter did not purport to represent an action taken by the board at any regular or special meeting. The roadmaster filed suit, alleging Sunshine Act violations. However, the trial court dismissed his complaint as being untimely under the law's provisions.

The Commonwealth Court reversed and remanded the case, finding that while the roadmaster's complaint was untimely under the law, the board of supervisors did not take proper action to dismiss the roadmaster under Section 603 of the Township Code. Because the decision was not transacted at a public meeting with the required public notice and because notice was not given to the third board member, the roadmaster's dismissal was void under the code.

Requiring agencies to specifically inform the public of the nature of private discussions balances the public's right to know with the agency's need to keep some matters private.

Section 708 – Executive Sessions

***Kennedy v. Upper Milford Tp. Zoning Hearing Bd.,* 834 A.2d 1104 (Pa. 2003)**

Citizens in this case alleged that the township's zoning hearing board had violated the Sunshine Act when the members recessed during a hearing on a Turnpike Commission application to increase the height of a communications tower on its property.

The Lehigh County Court of Common Pleas ruled in favor of the zoning board and dismissed the action. The Commonwealth Court reversed that decision when the citizens appealed.

However, on appeal to the state Supreme Court, the decision in favor of the zoning hearing board was restored. The Supreme Court ruled that, because of the nature and sensitivity of zoning board deliberations, certain proceedings are exempt from the open meeting provisions of the Sunshine Act and can be held in private.

The court concluded that a zoning hearing board is, in many respects, "an agency characterized predominantly by judicial characteristics and function" and thus, "it is particularly appropriate for zoning boards to deliberate privately."

Section 708 – Executive Sessions

***Taylor v. Borough Council Emmaus Borough,* 721 A.2d 388 (Pa. Cmwlth. 1998)**

During a regular meeting, the borough council voted to go into an executive session "to discuss a personnel matter." Upon reconvening, the council appointed a law firm as special counsel to investigate the matter, which apparently involved the borough police chief.

Following suit by both the police chief and the local paper, which alleged that the council held a private meeting or hearing in violation of the Sunshine Act, the trial court issued a permanent injunction barring the council from taking witnesses' testimony at any meeting not open to the public *(with limited exceptions)*.

The Commonwealth Court reversed this ruling, reasoning that taking testimony as part of an investigative proceeding involved no voting or decision on agency business, nor did it involve recommendations or establishment of policy. Therefore, the Sunshine Act did not apply to this case.

Section 708 – Executive Sessions

***Morning Call, Inc. v. Board of School Directors of Southern Lehigh School Dist.,* 642 A.2d 619 (Pa. Cmwlth. 1994)**

In the course of selecting a new school superintendent, the school board interviewed candidates in executive session and "voted" in executive session to reduce the number of candidates from five to three. Although the final selection of the superintendent was made at a public meeting, the plaintiff claimed that the preliminary vote in the selection process required a public meeting and could not be conducted in an executive session.

Finding in favor of the school district, the lower court held that the preliminary vote was really nothing more than a further ranking of the candidates and, therefore, was not a vote within the meaning of the Sunshine Act.

On appeal, the Commonwealth Court affirmed the decision of the lower court and followed a similar rationale. The court believed the executive session "vote" was secondary to the ultimate matter to be decided and was not an essential component of the action eventually taken. The court described a vote within the meaning of the act as being one which "commits the agency to a course of conduct."

According to the court, this decision was consistent with the Pennsylvania Supreme Court's decision in *Consumers Ed. and Protective Ass'n v. Nolan,* 470 Pa. 372, 368 A.2d 675 (1977). The court also distinguished a Michigan case, *Booth Newspaper Inc. v. University of Michigan Board of Regents,* 481 N.W.2d 778 (1992), involving an act that required all "decisions" of a public body to be made in an open meeting. The Pennsylvania court noted the different and apparently broader scope of the Michigan act and thus found it inapplicable to the present case.

A violation of the Sunshine Law occurs when a public meeting is held without proper notice or when an impermissible private meeting takes place.

Section 708 – Executive Sessions

***Reading Eagle Co. v. Council of City of Reading,* 627 A.2d 305 (Pa. Cmwlth. 1993)**

A governmental agency must specifically state its reasons for going into executive session to comply with the Sunshine Act. In this case, the Commonwealth Court held that it is not enough for an agency to announce that it wants to discuss matters of litigation.

This case arose when a city council went into executive session and announced it would be discussing "litigation matters." The newspaper took legal action, claiming that the public description of the executive session required greater specificity than had been provided. The lower court found in favor of the plaintiff and held that, with respect to existing litigation, the names of the parties, the docket number, and the name of the court must be identified in the public meeting. In cases involving an identifiable complaint, the nature of the complaint, but not the identity of the complaining party, must be provided in an open session.

The Commonwealth Court affirmed the lower court decision and extensively cited a

Mississippi case, *Hinds County Bd. of Supervisors v. Common Cause of Mississippi,* 551 So.2d 107 (Miss. 1989), to the effect that the public announcement must provide meaningful information to the public about the executive session. The information provided must be extensive enough to describe a real, discrete situation and may not be so general as to be meaningless.

Requiring agencies to specifically inform the public of the nature of private discussions balances the public's right to know with the agency's need to keep some matters private for the good of the public.

Section 708 – Executive Sessions

***Mirror Printing Co., Inc. v. Altoona Area School Bd.,* 609 A.2d 917 (Pa. Cmwlth. 1992)**

The Commonwealth Court ruled that discussions held in a closed school board executive session on teacher disciplinary proceedings and the basis of a teacher's suspension agreement did not violate the Sunshine Act. In this case, the ultimate vote to accept the agreement was taken at a public meeting.

On May 28, 1987, a public school board hearing was held to discuss disciplinary measures against a high school teacher. The teacher requested that the hearing be conducted in private, as provided under Section 1126 of the Public School Code. 24 P.S. § 11-1126.

Following this initial hearing, the board held an executive session to discuss the disciplinary proceedings. The board's solicitor subsequently worked out a settlement agreement with the teacher's counsel calling for a six-month suspension. At a second executive session, the board was notified of the agreement, and the solicitor was asked to draft the agreement.

At a subsequent open meeting, the board adopted the suspension agreement. *The Altoona Mirror* newspaper sought equitable relief, alleging that holding closed deliberations without disclosing the nature of the deliberations or the basis of the agreement violated the Sunshine Act.

The court weighed the benefits of requiring meetings to be open with Section 708 of the act on executive sessions and the need for confidentiality in certain situations.

> Because the decision to close the nursing home was related to the labor negotiations process, the decision was exempt from the open meeting requirements of the Sunshine Law.

"While executive sessions are not to be used to circumvent the public's right to know, this right must be balanced under certain situations with the individual's right to seek confidentiality concerning a disciplinary matter." The court concluded that the teacher's right to confidentiality in this disciplinary proceeding fell within the Section 708 exceptions to the open meeting requirements and the board was not required to reveal what took place at its executive session.

Section 708 – Executive Sessions

***Fraternal Order of Police, Flood City Lodge No. 86 v. City of Johnstown,* 594 A.2d 838 (Pa. Cmwlth. 1991)**

On December 12, 1986, the mayor of Johnstown notified all of the city's police officers, except the chief, that effective midnight December 31, they would be laid off indefinitely due to the city's failure to adopt a budget. The officers were subsequently reinstated on January 15, 1987.

The Fraternal Order of Police, Flood City Lodge No. 86, challenged the layoffs as illegal and invalid because, among things, the action violated the Sunshine Act. The FOP contended that there was no public meeting or vote before the layoffs.

The court, however, found otherwise. A violation of the Sunshine Act occurs when a public

It was never a purpose of the law to compel negotiations of labor contracts in the open.

meeting is held without proper notice or when an impermissible private meeting takes place. Here, the court found that the decision to lay off the officers was not made at an impermissible meeting but rather was made at the city council meeting at which the budget was discussed. This city council meeting, which was properly advertised, complied with the Sunshine Act. Therefore, the decision to lay off the officers was made during a valid meeting and did not violate the Sunshine Act.

Section 708 – Executive Sessions

The Morning Call Inc. v. The Council of Borough of East Stroudsburg,
6 D.&C. 4th 321 (Monroe C.C.P. 1989)

The Monroe County Court of Common Pleas held that a borough's closed "executive session" at which a personnel matter was discussed yet no official action was taken does not violate the Sunshine Act.

Here, an executive session was convened in the middle of an open public borough council meeting. When council returned, it voted to have the borough manager handle the personnel matter at issue. *The Morning Call* challenged this action, alleging that the private meeting violated the Sunshine Act.

The court determined that Section 708 of the law exempted the private meeting from the act's requirements. Section 708 allows for closed executive sessions for purposes of discussing "... any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency..." 68 P.S. ß 278.

The court found that the discussion that took place in the executive session fell within this provision. In addition, it was not until the open public meeting was reconvened that the decision to allow the borough manager to handle the personnel matter was voted upon. Accordingly, the court held that the executive session did not violate the Sunshine Act and upheld the council's action.

Section 708 – Executive Sessions

Butler v. Indian Lake Borough,
14 A.3d 185 (Pa. Cmwlth. 2011)

The Commonwealth Court affirmed a trial court ruling that a borough violated Section 708(b) of the Sunshine Act by failing to announce the reason for holding an executive session.

The court found that the trial court correctly held that the borough council could not simply state that it was going into executive session to discuss potential litigation. Instead, the council "was required to identify the subject of the litigation."

Section 708 – Executive Sessions

McCord v. Pennsylvania Gaming Control Bd.,
9 A.3d 1216 (Pa. Cmwlth. 2010)

The Commonwealth Court allowed a petition made by the state treasurer that he be permitted to participate in executive sessions of the Pennsylvania Gaming Control Board by virtue of his position as an *ex officio* (non-voting) member of the board.

The Commonwealth Court stated that the Sunshine Act does not limit executive sessions to "voting members." It also held that because Section 708 precludes official action from taking place in executive sessions, "the legal right to vote as a member of the board is of no consequence with respect to participation in an executive session."

Section 708(a)(1) – Executive Sessions

***Easton Area Joint Sewer Authority v. The Morning Call, Inc.*, 581 A.2d 684 (Pa. Cmwlth. 1990)**

Here, a newspaper brought action seeking a declaration that the joint sewer authority violated the Sunshine Act when it held an executive session to discuss the termination of a consultant's contract. The newspaper also sought release of the executive session tape pursuant to the Sunshine Act and the Right-to-Know Law.

On appeal, the Commonwealth Court held that a consultant was not a "public employee or officer" within the meaning of Section 708(a)(1) of the Sunshine Act, which authorizes an agency to hold a closed executive session to discuss personnel matters involving public officers and employees.

The Commonwealth Court also held that the common pleas court did not exceed the bounds of its discretion by ordering the release of the executive session tape, notwithstanding the authority's contention that it made a good-faith effort to comply with the law by reading the termination resolution when the open meeting reconvened.

Section 708(a)(1) – Executive Sessions

Section 713 – Business Transacted at Unauthorized Meeting

***Keenheel v. Commonwealth, Pennsylvania Securities Com'n*, 579 A.2d 1358 (Pa. Cmwlth. 1990)**

Here, it was alleged that the Pennsylvania Securities Commission violated the Sunshine Act when it voted in an executive session to accept an agreement settling a discrimination action brought by a former employee. At its August 27, 1987, meeting, the commission, indicating that it wished to discuss a personnel matter, went into executive session.

The meeting minutes showed that the commission reviewed the proposed settlement agreement and voted to enter into it once the agreement was duly executed by counsel. Section 708(a)(1) of the Sunshine Act allows an agency to go into executive session to discuss personnel matters, but it specifically provides that official action on discussions held in executive session must be taken in an open meeting. The commission had apparently failed to return to an open meeting to vote on whether to enter into the settlement agreement.

The court noted that Section 713 of the act grants the court discretion to invalidate any and all official action taken at an illegally closed meeting. The court recognized that the commission should have returned to an open meeting to vote; however, it stated that because the petitioner had not claimed an injury because of this violation, it did not find that justice would be served by setting aside the settlement agreement on this basis. In so holding, the court cited *Ackerman v. Upper Mt. Bethel Tp.* *(For more details on Ackerman, turn to page 30.)*

Section 708(a)(2) – Executive Sessions: Collective Bargaining

***Lawrence County v. Brenner*, 582 A.2d 79 (Pa. Cmwlth. 1990)**

The Commonwealth Court held that for purposes of the act, the county commissioners' decision to close a nursing home — made during an executive session after collective bargaining negotiations reached a stalemate — was a matter that affected the nursing home staff. Therefore, the commissioners were obligated to discuss the decision in negotiations with the staff's bargaining representative.

The court found that limitations made on comments by the public in open meetings did not violate the Sunshine Law.

Because the decision to close the nursing home was related to the labor negotiations process, the decision was exempt from the open meeting requirements of the Sunshine Act.

In the absence of fraud, an infraction that occurs while a decision is improperly made at a meeting not open to the public may be cured by subsequent ratification of the decision at a public meeting.

Section 708(a)(2) – Executive Sessions: Collective Bargaining

Section 709 – Public Notice

***St. Clair Area School Dist. v. St. Clair Area Educ. Ass'n,* 552 A.2d 1133 (Pa. Cmwlth. 1988)**

The court held that the fact that a tentative agreement between the teachers' union and the school district did not take place in public at a duly advertised meeting did not preclude the agreement from having legal effect.

It was never a purpose of the law to compel negotiations of labor contracts in the open, and the act specifically permits any agency to hold collective bargaining sessions outside an open meeting.

Section 709 – Public Notice

***Borough of East McKeesport v. Special/ Temporary Civil Service Com'n of Borough of East McKeesport,* 942 A.2d 274 (Pa. Cmwlth. 2008)**

In this case, a borough police officer was terminated for leaving his post without notifying the proper people as required by department policy. He appealed to the Civil Service Commission, which affirmed the termination. On appeal, the trial court vacated the commission's decision because one member had failed to recuse himself from the proceedings.

A special civil service commission convened at the order of the court and agreed during an open and public meeting to reinstate the officer. However, the commission failed to publish a Sunshine Act notice about the deliberations, and the borough appealed to the trial court on this and several other grounds.

The trial court denied the appeal on all fronts. While it agreed that the commission had violated the notice requirements of the Sunshine Act, it held that the infraction was curable because the commission could ratify its decision at a future meeting.

The borough then appealed to the Commonwealth Court, seeking resolution of three issues, including the purported Sunshine Act violation. It noted that a court's decision to invalidate an agency's action based on a Sunshine Act violation is discretionary, not obligatory as contended by the borough. The trial court did not abuse that discretion, the Commonwealth Court said, and correctly drew on case precedent to hold that where a violation of the Sunshine Act is curable, the court again is not obligated to invalidate an agency's action.

Therefore, the Commonwealth Court affirmed the trial court on the matter of the Sunshine Act and all other issues.

Because council's official action, or vote, to adjourn the meeting occurred during public session, council's "executive session" to discuss the matter did not constitute a violation of the act.

Section 709 – Public Notice

***Petition of Bd. of Directors of Hazleton Area School Dist.,* 527 A.2d 1091 (Pa. Cmwlth. 1987)**

Here, the Valley Education Association asserted that the lower court erred in approving the Hazleton Area School District's plan, which they claimed was adopted in violation of Section 709 of the Sunshine Act.

The court premised its holding with the statement that, if the allegations in this case had

pertained to anything more than technical non-compliance, its disposition of this issue might have been different. However, the court stated that there was not even an allegation that anyone was harmed by the failure to advertise, and it was obvious from the record that the association knew of the district's last-minute attempts to devise a plan. Therefore, the court concluded that compliance with the notice provisions was properly excused by the trial court in this case. The court noted that its holding here was a narrow one.

It stated that the failure to comply with the notice provision may be excused because: 1) the trial court was acting in the exercise of its equity powers because of the upcoming primary election; 2) there was no allegation that a concerned individual did not learn of the information that should have been advertised and was prejudiced thereby; and 3) there was an opportunity in the common pleas court to develop a record with respect to the substance of the plan adopted at the district's meeting.

The district had asserted as a defense that the action in question was not subject to the notice provisions of the act because it was an "emergency meeting." However, the court disagreed with this assertion, stating that the adoption or failure to adopt a plan did not in any way pose a "clear and present danger to life or property," which is the applicable standard justifying an emergency meeting.

Section 710 – Rules and Regulations for Conduct of Meetings

Section 710.1 – Public Participation

***Baravordeh v. Borough Council of Prospect Park,* 699 A.2d 789 (Pa. Cmwlth. 1997), 706 A.2d 362 (Pa. Cmwlth. 1998)**

Baravordeh filed a "petition for review," claiming the borough council violated his rights under the Sunshine Act by refusing to let him comment at a regular open meeting about a matter that occurred more than 14 years ago and limiting comments to "current business."

Since the court held that a video camera falls within the definition of a "recording device"... an individual has a right to use a video camera to tape any open meeting.

Stressing that the law provides that residents shall be given a reasonable opportunity to comment on "matters of concern" that "may" come before the agency, Baravordeh asserted that a limitation on comments to current business or any other subject matter limitation "denies residents the opportunity to raise new issues and to evaluate the performance of their public officials." Baravordeh further argued that the council president lacked authority to impose any standard limiting subject matter at a meeting.

The Commonwealth Court disagreed. Affirming the lower court's ruling, the court found, inter alia, that limitations made on comments by the public in open meetings did not violate the Sunshine Act. The court did note that the denial of the right to speak could give rise to a cause of action in a proper case. However, this did not apply to the instant action, where the appellant wished to discuss a matter that occurred more than 14 years ago.

Furthermore, the court found that Baravordeh failed to establish that the president of the borough council lacked authority to limit a resident's right to speak at a regular meeting because there was nothing in the record to suggest that council did not adopt rules governing content of meetings and no other council member challenged or expressed disagreement with the president's action.

Section 710.1 – Public Participation

Section 708 – Executive Sessions

***Sovich v. Shaughnessy*, 705 A.2d 942 (Pa. Cmwlth. 1998)**

Due to a limited number of seats and a high public attendance, Leetsdale Borough Council adjourned and rescheduled its monthly meeting before conducting any business. The meeting was subsequently held in the same building; excess members of the public were seated in an adjacent garage equipped with a single speaker and chairs.

To give remarks or pose questions, the separated members of the public would leave the overflow facilities, enter the meeting room, and use the microphone at the council's table. Dissatisfied with this arrangement, residents brought suit against the council, alleging violations of the Sunshine Act.

Residents first argued that a violation of the act occurred when the council president limited attendance at the initial meeting to 45 people *(the occupancy limit for the chambers)*. The Commonwealth Court disagreed. The court noted that only about a half dozen people generally attended the council meetings and the seating provided could accommodate more than six times the usual number of attendees at a council meeting. Furthermore, when seating arrangements proved insufficient and members of the public were excluded from the meeting, council immediately entertained a motion to adjourn before conducting any business. Therefore, since no member of the public was deprived of an opportunity to participate in the meeting, no violation of the Sunshine Act occurred.

A closed borough council meeting at which charges against the borough's police chief were discussed and adopted did not violate the Sunshine Law.

The court also rejected the residents' argument that the executive session held to discuss whether to adjourn the initial meeting and reconvene at a later date violated the Sunshine Act. Because council's official action, or vote, to adjourn the meeting occurred during public session, council's "executive session" to discuss the matter did not constitute a violation of the act.

Finally, the Commonwealth Court held that the accommodation of excess members of the public in an adjoining facility equipped with speakers and chairs provided the public with the right to be present and observe the council meeting. Residents were given the opportunity to participate in the meeting, they could hear the proceedings in the facility via an installed speaker system, and they could directly address council by using the supplied microphone.

Section 711 – Use of Equipment During Meetings

First Amendment Rights at Open Meetings

***Whiteland Woods, L.P. v. Township of West Whiteland*, No. CIV. A. 96-8086, 2001 WL 936490 (E.D. Pa. Aug. 14, 2001)**

In *Whiteland Woods, L.P. v. Township of West Whiteland*, 193 F.3d 177 *(3d Cir. 1999)*, a real estate developer sought an injunction from the common pleas court to prevent the Chester County township from prohibiting audience members from videotaping its planning commission meetings.

The township acknowledged that the Sunshine Act requires it to allow the videotaping of its proceedings and agreed not to enforce the ban at future meetings. The developer then filed an action in the U.S. District Court alleging violations of his rights under the First and 14th Amendments of the U.S. Constitution, the Pennsylvania Constitution, and the Sunshine Act.

The district court granted the township's motion for summary judgment, and the court of appeals affirmed, finding that the videotaping ban did not violate the developer's First Amend-

ment right of access to such meetings since he was allowed to attend the meetings and compile a record of the proceedings by other means.

The township defendants filed a petition for attorney's fees, stating that the plaintiff brought the action in bad faith because the issues had already been litigated in state court. The court of appeals remanded the petitions to the district court, which awarded the township $38,008.45 for fees incurred.

Section 711 – Use of Equipment During Meetings

***Malczyk v. Slocum Tp. Zoning Hearing Bd.*, 85 Luzerne Legal Register 207 (Luzerne C.C.P. 1995)**

A Luzerne County judge ruled that the Sunshine Act protects an individual's use of a video camera at a zoning hearing board meeting provided that use of the camera conforms to reasonable rules established by the governmental entity.

In this case, the judge held that the Sunshine Act applies to video cameras and zoning hearing boards since these boards are not "judicial" within the meaning of the act.

The plaintiff had sought to bring a hand-held video camera into a zoning hearing board's proceedings and was refused admission. The board informed the plaintiff that he may use an audiotape but not a videotape. Two weeks later, the plaintiff tried to re-enter with the video camera and was again denied access.

In applying a four-part analysis to this case, the court first concluded that a zoning hearing is a public meeting for purposes of the Sunshine Act, which requires that all official actions or deliberations take place in an open meeting. Second, since the court held that a video camera falls within the definition of a "recording device" under Section 711 of the act, an individual has a right to use a video camera to tape any open meeting.

Third, the court recognized that a zoning hearing board is both legislative and judicial in nature and, therefore, the act does apply to the legislative nature of the hearing board. Since the Sunshine Act does not apply to judicial proceedings, the court's implicit reasoning is that a video camera may be used to tape the hearing, but not the deliberations, of the board.

Finally, the court held that use of a recording device may be limited by reasonable rules and regulations. Relying on the court's decision and the act's provisions, a zoning hearing board or any other quasi-legislative body may regulate the use of video cameras.

The following regulations, although not yet challenged, provide reasonable guidance to help balance a citizen's right to videotape a hearing with the governing body's need to prevent disruption of its proceedings:

1) Video cameras must be hand-held.

2) The cameras must be self-powered and not plugged into municipal outlets.

3) The camera may be used only in a designated video area.

4) The camera may not be concealed.

Section 711 – Use of Equipment During Meetings

***Hain v. Board of School Directors of Reading School Dist.*, 641 A.2d 661 (Pa. Cmwlth. 1994)**

The school board passed a resolution banning the videotaping of its meetings by members of the public. The plaintiff brought an action under the Sunshine Act and the Declaratory Judgments Act asking that the resolution be invalidated as contrary to the terms of the Sunshine Act. The plaintiff also sought monetary damages for violation of the Sunshine Act and declaratory relief in the form of an injunction against implementation of the resolution.

Since the action was initiated more than 30 days after the resolution banning the videotaping of meetings was passed, the lower court held in favor of the school district, dismissing the plaintiff's action as untimely since the Sunshine Act did not allow for a challenge to be brought more than 30 days after an alleged violation of the Sunshine Act occurs. Despite its dismissal of the action, the lower court discussed the merits of the case and found that the resolution did

not violate the purposes of the act.

On appeal, the Commonwealth Court affirmed in part and reversed in part. While it affirmed the dismissal of the Sunshine Act action as untimely, the court found that the Declaratory Judgment Act was applicable and provided a basis upon which to find that the ban on videotaping was illegal and invalid.

Section 713 – Business Transacted at Unauthorized Meeting

***Tim Mistick and Sons, Inc. v. City of Pittsburgh,* 567 A.2d 1107 (Pa. Cmwlth. 1989)**

This case addressed the time period for raising a legal challenge to a violation of the Sunshine Act. The court held that the section of the act requiring that a "legal challenge" be filed within 30 days from the date of the alleged unauthorized meeting requires only that a legal dispute or objection be raised within 30 days. The manner in which the challenge is begun, whether by complaint, writ, agreement, or other traditionally recognized means, is of no particular significance.

Section 716 – Confidentiality

***In re Blystone,* 600 A.2d 672 (Pa. Cmwlth. 1991)**

The Commonwealth Court held that a closed borough council meeting at which charges against the borough's police chief were discussed and adopted did not violate the Sunshine Act. The charges adopted at the closed meeting were in response to the police chief's alleged non-issuance of citations for driving under the influence charges. Ultimately, the chief was demoted to patrolman after a vote at an open public meeting.

The chief challenged the private meeting as a violation of the Sunshine Act. Under Section 704 of the act, "official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public." Section 703 of the act defines "official action" to include "the vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report, or order." The police chief argued that since the vote to adopt the charges against him was taken in the closed meeting, the act was violated.

The court determined, however, that the municipality's actions to adopt the charges were excluded from the act by Section 716, which specifically exempts from the act "those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the investigation of possible or certain violations of the law."

Since the chief's actions were being investigated by the district attorney's office, the meeting at which the charges were adopted by the council was properly exempted from the act's provisions. In any event, the vote to demote was properly taken at an open meeting.

First Amendment Rights at Open Meetings

***LaVerdi v. Jenkins Tp.,* 49 Fed. Appx. 362 (3d Cir. 2002)**

In *LaVerdi,* the United States Court of Appeals for the Third Circuit explained the boundaries of board or agency discretion in limiting the public's right to speak at open meetings.

LaVerdi filed a civil rights action under 42 U.S.C. § 1983 claiming that Jenkins Township, Luzerne County, and Arnone, who was chairman of the board of supervisors, violated his First Amendment rights by silencing him at a public meeting because of his views and the content of his speech.

During the meeting, LaVerdi raised questions about Arnone's salary and role as the township's roadmaster. Shortly after LaVerdi began speaking, he and Arnone had an "unfriendly exchange." Arnone ruled him out of order and asked him to sit down. However, LaVerdi continued to speak, and Arnone asked an officer to eject him from the meeting.

In a motion for summary judgment, Arnone asserted affirmative defenses of absolute immunity for legislative activities and qualified immunity in the performance of discretionary functions.

The court rejected Arnone's claim of absolute immunity because his actions were not substantively or procedurally legislative. The court explained that absolute immunity under Section 1983, the federal civil rights law, did not apply because Arnone's actions did not involve "general policymaking" and were not taken pursuant to "constitutionally accepted procedures to reach a reasoned decision representing the will of the people he was chosen to represent."

The court further stated that qualified immunity attaches when, in performing discretionary functions, a government official does not violate clearly established statutory or constitutional rights, which a reasonable person would have known about. The court, citing U.S. Supreme Court precedent, stated that "whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken."

Therefore, the court found that "a reasonable public official would have known that silencing an individual because of his views would violate that individual's First Amendment rights." However, if Arnone silenced La Verdi because he was causing a disruption serious enough to justify his removal from the meeting, then qualified immunity shielded Arnone from liability.

After reviewing the meeting's transcript, the court concluded that Arnone was not entitled to summary judgment because a genuine issue of fact remained over whether Arnone silenced LaVerdi because he disapproved with his views or because LaVerdi was seriously disrupting the meeting.

LaVerdi appealed this decision on other grounds, but the appeal was rejected and the instant decision affirmed.

Sections 701-716 of Sunshine Law of 1986
Sections 1-9 of the Open Meetings Law of 1974

Property Owners, Residents, and/or Taxpayers of Pleasant Valley School Dist. v. Commonwealth, Dept. of Community Affairs,
552 A.2d 769 (Pa. Cmwlth. 1989)

Here, the issue was whether the Department of Community Affairs had jurisdiction to consider violations of the Open Meetings Law *(Act 175 of 1974)* in reviewing Debt Act proceedings.

The court held that the department had no jurisdiction over alleged violations of the Open Meetings Law in connection with the procedures by which school districts seek approval for issuance of general obligation bonds.

Sections 1-9 of the Open Meetings Law of 1974

Bianco v. Robinson Tp.,
556 A.2d 993 (Pa. Cmwlth. 1989)

On January 26, 1988, a majority of Robinson Township's commissioners decided to promote two police officers without a public hearing, thus violating the Sunshine Act. On February 8, 1988, however, the January 26 action was thoroughly debated at a regular meeting of the entire board of commissioners, and a resolution was adopted reaffirming the promotion of the two police officers. The plaintiffs argued that the February 8 reaffirmation of the January 26 action was invalid because the eligibility list from which the officers were promoted was outdated.

The court held that the February 8 public meeting of the board of commissioners, where the resolution was passed after debate, renders moot the minority commissioner's argument. The February 8 meeting satisfied the requirements of the law. The court stated that the public's right to know and to be present at this decision-making meeting was in accordance with the intent of the legislature, particularly where, as here, there was no allegation of fraud.

In support of its holding, the court cited *Doverspike v. Black,* 535 A.2d 1217 (Pa.

Cmwlth. 1988), where it was held that a contract by the county commissioners for appraisal of active mineral lands with a real estate service company, although dated before the vote on the contract at the public meeting, was validated by public vote and satisfied the requirements of the Open Meetings Law regarding formal action.

A Guide to the Right-to-Know Law

Introduction

While townships have long been required to comply with a right-to-know law, the newest version, Act 3 of 2008, changed the definition of what is and is not a public record and created a state Office of Open Records to oversee implementation of and compliance with the act. The new Right-to-Know Law has provided clarity on some issues but has led to much confusion on others.

Since the law took effect on January 1, 2009, the Office of Open Records has been inundated with thousands of appeals from individuals, businesses, and the media contesting records requests denied by state and local governments. The office has issued several thousand final determinations on these appeals, many of which impact township government.

Since 2010, Pennsylvania's appellate courts have issued rulings on many of these disputed issues. The "Judicial Decisions and Final Determinations" portion of this manual (see Page 82) provides information on how the courts and the Office of Open Records have ruled on township-related issues and provides guidance on which cases should be examined when a township, in consultation with its solicitor, is deciding whether a document is exempt from disclosure.

About the Office of Open Records

Townships should look to the Office of Open Records as a key source of information on the state's Right-to-Know Law. In addition to providing training and ruling on appeals, the office is staffed with attorneys who can answer specific questions on what is and is not a public record.

Township officials may contact the Office of Open Records by calling (717) 346-9903 or emailing openrecords@pa.gov.

The office's website, http://openrecords.state.pa.us, also contains a wealth of information about the Right-to-Know Law, including copies of the office's final determinations, judicial rulings on appeals of these determinations, and appeals pending before the Commonwealth Court.

The site also includes tips from the office's executive director, interim regulations for filing appeals, frequently asked questions, and the fee schedule for providing copies of records.

Appointing an Open Records Officer

The Right-to-Know Law requires that every township appoint an open records officer. This is the township official or employee who receives records requests, directs them to the appropriate person, tracks the progress of responses, and issues interim and final responses to requesters. Townships must ensure that this position is filled at all times and should be careful not to leave it vacant when there is a change in township staff.

The open records officer should be the same employee who manages the township's records. In many cases, this will be the secretary, secretary-treasurer, or manager. The open records officer should also be authorized to consult the township solicitor when necessary to determine whether a record is public and to seek assistance in writing denial letters.

The Office of Open Records has advised that the Right-to-Know Law does allow townships to appoint more than one open records officer. Because township police departments possess records that cannot be viewed by non-law enforcement personnel, those townships with police departments may want to consider appointing a separate open records officer for their police department or at least have a designee that the township's open records officer may rely upon to review law enforcement records. *(OOR Advisory Opinions – Separate ORO Appointment for PD)*

The Right-to-Know Law requires townships to register their open records officer with the Office of Open Records. When a township appoints a new open records officer, it must send updated information, including the officer's name and the township's name, address, phone and fax numbers, and email address *(if applicable)* by email to OROregistration@pa.gov or by fax to (717) 425-5343. The office is also required by law to post all open records officers' names and contact information on its website, http://openrecords.state.pa.us.

Although not required by law, PSATS recommends that townships adopt an open records policy.

Posting Open Records Information

The Right-to-Know Law requires townships to post the following information at the township building and on their website if they have one:

- contact information for the township's open records officer
- contact information for the state Office of Open Records
  - Office of Open Records, Commonwealth Keystone Building, 400 North St., Plaza Level, Harrisburg, PA 17120-0225
  - Phone: (717) 346-9903
  - Website: http://openrecords.state.pa.us
  - Email: openrecords@pa.gov
- contact information for the county district attorney if the township has a police department
- a records request form *(Townships may use the Office of Open Records' standard Right-to-Know Law request form as shown on Page 62 or create their own but must always accept the state's standard request form.)*
- the township's open records policy, if it adopts one

Establishing an Open Records Policy

Although not required by law, PSATS recommends that townships adopt an open records policy that identifies the open records officer, specifies his or her contact information and office hours, and includes information about fees, how to submit open records requests, and how to appeal a denial. A sample right-to-know policy appears on Page 60.

When drafting an open records policy, townships may also include a reference to their record retention schedule, if they have one; state whether they will accept verbal or anonymous requests *(townships must accept written requests but are not required to accept*

verbal or anonymous ones); and identify which public records, if any, will be available on their website, including open records requests and responses.

If a township chooses to adopt an open records policy, it must post the policy at the township office and on the township's website if it has one.

The Right-to-Know Law Request Form

The Office of Open Records has developed a standard Right-to-Know Law request form that all state and local government offices must accept. *(See a copy of the form on Page 62)*. However, townships may also create their own form to use in addition to the state form.

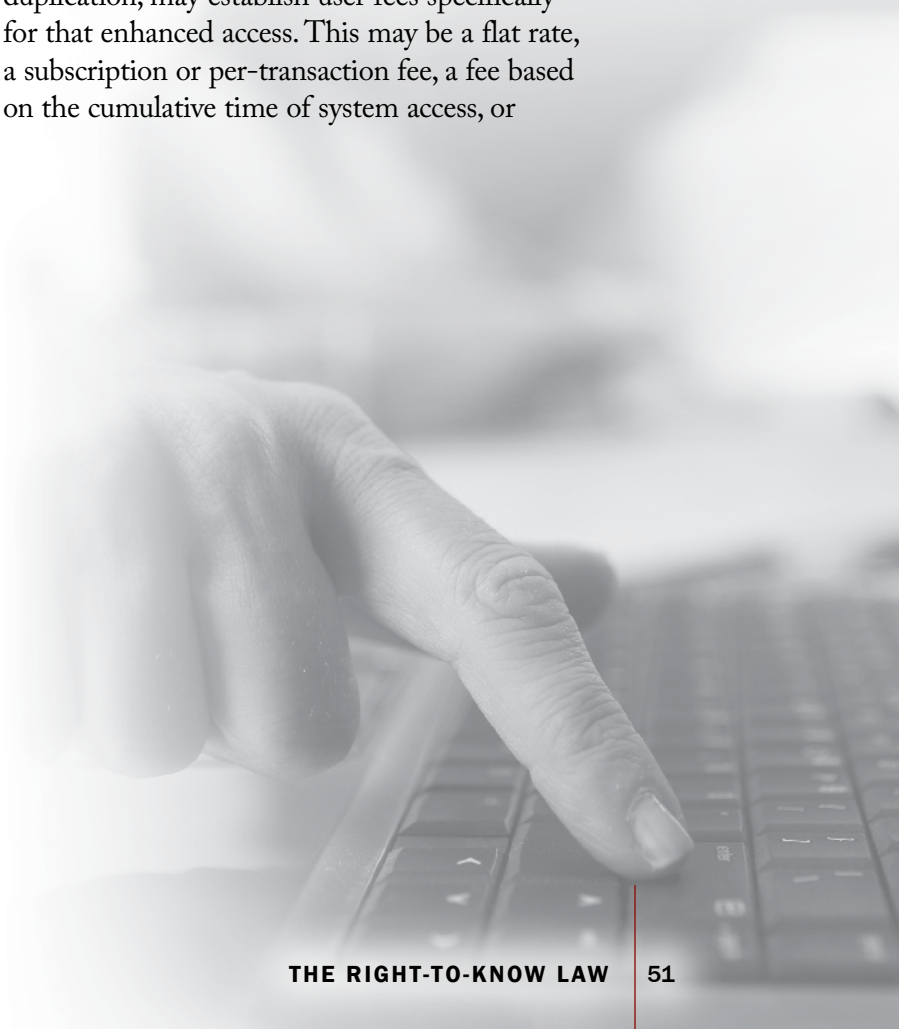
If developing its own form, a township should determine what information would be helpful in processing requests. The form should help expedite the request and ensure the accuracy of the township's response but should not be burdensome to the requester. Townships may not ask why the request is being made or what the records will be used for.

A sample form developed by PSATS is shown on Page 61.

Office of Open Records' Fee Schedule

The Right-to-Know Law requires the Office of Open Records to establish a fee schedule for record requests and to review these fees twice a year. The current allowable fees include the following:

- **Photocopy** *(8½ x 11-inch page, black and white, single-sided copy)* — Townships may charge up to 25 cents per page.
- **Certification of a record** — Townships may charge reasonable fees to certify a record, but the Office of Open Records recommends a fee of no more than $5. *(This does not include notarization fees.)* A certification generally involves stamping a record with the township seal and signing a statement that the record is a true and attested copy of the original document.
- **Specialized documents such as color copies, blueprints, nonstandard-sized documents, microfiche, audio, video, and other media** — Townships may charge no more than the actual cost of reproduction.
- **Conversion to paper** — If a record is only maintained electronically or in some other nonpaper format, the township must charge for whichever is less expensive, a paper copy or a copy in the original media, unless the requester specifically asks for the more expensive format.
- **Requests fulfilled by fax or U.S. mail** — Townships may charge no more than the actual cost of the fax or postage.
- **Redaction** — Townships may not charge to redact a record. They may, however, charge for any copies made *(following the schedule above)* to redact portions of a document and make it suitable for public access. No additional copy fees may be charged.
- **Enhanced electronic access** — A township that offers enhanced electronic access to records *(such as secure, remote access to a township database),* in addition to standard inspection and duplication, may establish user fees specifically for that enhanced access. This may be a flat rate, a subscription or per-transaction fee, a fee based on the cumulative time of system access, or



any other reasonable standard. However, these fees must not be established to prevent access or make a profit. Fees for enhanced electronic access must be approved by the Office of Open Records before they are implemented.

• **Staff time** — Townships may not charge for staff time spent searching for or retrieving records or responding to requests.

• **Legal review** — Townships may not charge for a legal review to determine if a record, or a portion of a record, is protected information.

• **Electronically transmitted records** — Townships may not charge fees for providing records electronically, such as through email, unless copies must first be made on a traditional copier to fill the request.

For example, if a document already exists in an electronic format and can be attached to an email, a township may not charge a fee because no copies were needed to fill the request. If the township must first copy and scan pages from a bound volume before emailing them, however, it may charge the requester for those copies.

• **Fees under state laws** — If another law authorizes a township to charge a set amount for a certain type of record, it may charge no more than that amount. For example, police departments may charge up to $15 for a copy of a vehicle accident report under the Vehicle Code.

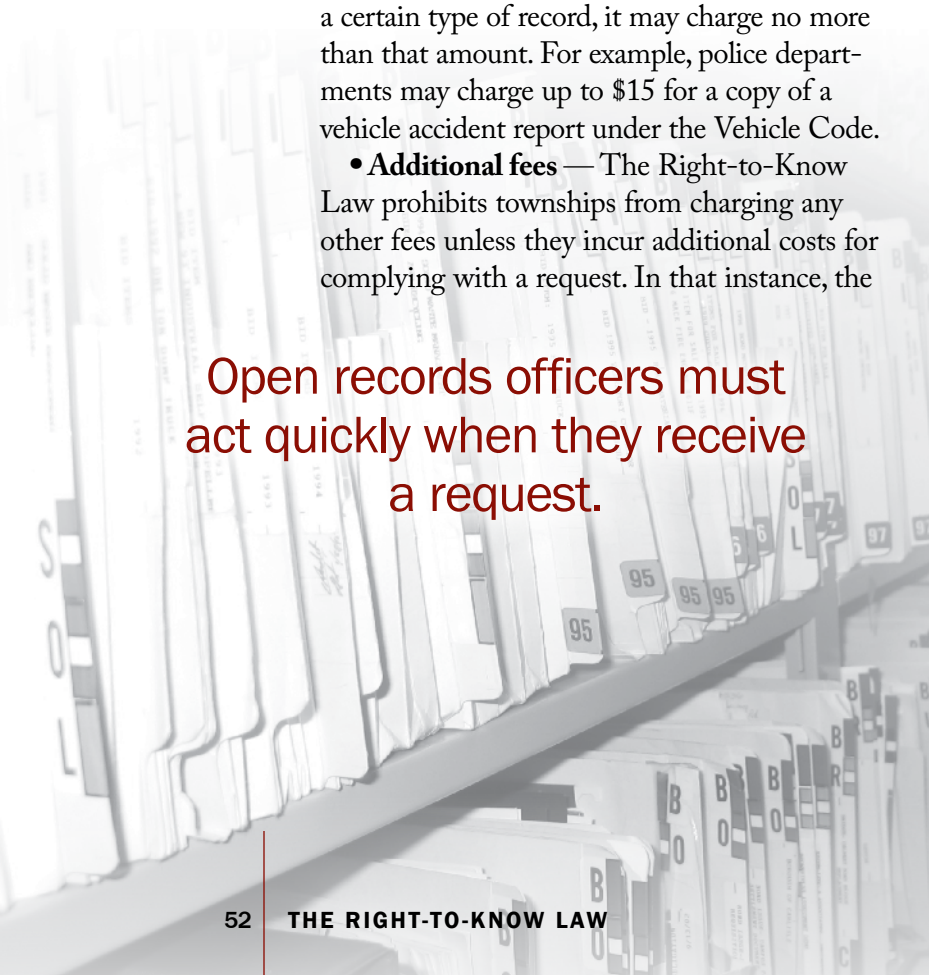
• **Additional fees** — The Right-to-Know Law prohibits townships from charging any other fees unless they incur additional costs for complying with a request. In that instance, the fees must be reasonable and documented.

• **Prepayment** — A township may require prepayment of copying, certification, and mailing fees before granting a request for access if the fees are expected to exceed $100.

• **Collecting payment for records requests** — The Office of Open Records recommends that once the requested records are ready for release, the township require payment before releasing them. The township must provide written notification that the requested records are available for pickup at the township office upon payment of the incurred fees. If the requester wishes to receive the documents by fax or mail, the written notification should include the actual cost for these services and state that the records will be sent upon receipt of payment.

The office makes this recommendation to avoid situations in which the township provides the requested records and the requester then fails to submit payment.

To view the office's fee schedule online, log onto http://openrecords.state.pa.us and choose "Fees" from the left side of the page.



Open records officers must act quickly when they receive a request.

Receiving and Responding to Records Requests

Townships are required to accept written open records requests submitted in person and via mail, email, and fax. They may also accept records requests through a website or other electronic means. Any legal resident of the United States, including a government agency, may submit a records request.

Upon receiving a request, the open records officer must note on it the date of receipt and the date by which he or she must respond in writing to the request. The officer must fulfill or deny the request or provide written notice that additional time is needed and the reason for the time extension, within ***five business days*** from receipt of the request. If the officer fails to respond in writing within five business days, the request is deemed denied, and the requester may appeal to the Office of Open Records.

Section 902 of the Right-to-Know Law authorizes the officer to take up to ***an additional 30 calendar days*** to fulfill a request for the following reasons:

- The request requires redaction;
- A document must be retrieved from a remote, or off-site, location;
- A legal review is needed to determine whether the record is subject to public disclosure;
- A bona fide and specified staffing limitation would prevent a timely response;
- The requester has not complied with the township's policy regarding access to records or refuses to pay the applicable fees; or
- The extent or nature of the request precludes a response within five business days.

Open records officers must act quickly when they receive a request. They should note, however, that the Office of Open Records has advised that "five business days" refers to the days the township office is open for business, not simply Monday through Friday.

Also, the date that the open records officer receives a request is not necessarily the postmark date or the date or time that a faxed or emailed request arrives at the township office. Instead, this is the business day on which the officer actually receives the request. For example, if the township office is open Tuesday through Friday and a records request is faxed to the township office after business hours on Friday, the open records officer should note the date received as the following Tuesday, when the office is again open for business. In this example, the township would have until Wednesday of the following week to fill the request.

The open records officer is responsible for directing the request to the correct department in the township and making sure that the request is fulfilled or denied within the mandatory timeframe.

Although the Right-to-Know Law does not require townships to track all the records requests they receive and when the township responded, this is a recommended practice.

Townships *are* required to keep a paper or electronic copy of the written request, including all documents submitted with it, until the request has been fulfilled. If the request is denied, the written request and all related documents must be maintained for 30 days. If the denial is appealed, the written request must be kept until a final determination is issued. Townships do not need to keep an extra copy of the requested items.

Under the Right-to-Know Law, all records are presumed to be public unless they are exempt from disclosure.

Evaluating Records Requests

Upon receiving a written records request, the open records officer must evaluate it to determine if the request is for a record and, if so, whether that record is open to the public.

Determining if the request is for a record

The Right-to-Know Law defines a "record" as any information, regardless of its 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. Records can take many forms, including papers, letters, maps, books, tapes, photographs, film or sound recordings, information stored or maintained electronically, and data-processed or image-processed documents. Emails are considered to be records and should be analyzed like any other documents to determine if they are public records.

If the requested document is a record, ***the officer should then determine if it is a public record***.

Determining if the request is for a <u>public</u> record

Under the Right-to-Know Law, all records are presumed to be public unless they are

exempt from disclosure because they fall into one of the following categories:

• **The record is protected by another state or federal law, regulation, or judicial order.** For example, Act 50 of 1998, the Local Taxpayer Bill of Rights, prohibits the release of any information from a tax audit, tax return, or tax investigation for any tax levied under the Local Tax Enabling Act *(including the earned income tax, occupational assessment tax, occupational privilege tax, amusement tax, and per capita tax)* and any tax on income. Act 50 includes a fine of up to $2,500 for violations and dismissal of the employee releasing the information. *(See the Judicial Decisions & Final Determinations beginning on Page 82 for more records protected by judicial decisions.)*

• **The record is subject to a privilege, such as attorney-client or doctor-patient privilege.** Attorney-client privilege is a legal concept that protects communication between a client and his attorney by considering such communication to be confidential. This privilege exists for all attorney clients, including townships. However, attorney-client privilege does not apply every time a client communicates with the attorney. Open records officers should consult with their township solicitor to determine whether a specific communication is covered by this privilege. Information exchanged between a solicitor and a township's staff or board of supervisors that does *not* meet this standard will be considered an open record and will be subject to disclosure unless it is protected by another statute or law.

• **The record is one of the exceptions under Section 708 of the Right-to-Know Law *(see Page 72).*** For example, under Section 708(b)(7)(viii), information in a personnel file regarding discipline, demotion, or discharge is exempt from public access. However, this exemption does not apply to the township's final action that results in demotion or discharge.

When deciding if a record falls under one of the Section 708 exceptions, townships should review the "Judicial Decisions and Final Determinations" section of this manual *(see Page 82)* and consult their solicitor or the Office of Open Records with specific questions.

If the requested record is not exempt under one of these three categories, it is considered a public record and must be released.

Remember that the Right-to-Know Law does not bar townships from releasing records that are exempt under Section 708, but it does not require the release of such records. However, township officials should consult with their solicitor to determine if there would be any negative consequences for releasing a record that is exempt from public access under the law.

Responding to requests in special situations

When an open records officer is evaluating a records request, one of the following situations may arise:

A township that denies access to a record must prove why the requested record is not public.

• **The request asks a question**, such as why the township paved Smith Road and not Park Drive. While the township may choose to answer questions, this is not a requirement of the Right-to-Know Law.

However, if a request asks a question that the township could answer by providing a public record, it should do so. For example, if the request asks what the roadmaster's salary is, the township should provide a copy of the minutes or other public document that states the salary.

• **The request is not sufficiently specific.** Section 703 of the Right-to-Know Law requires records requests to be specific enough to allow the township to determine which records are being requested. The open records officer may deny requests that are determined to be overly broad.

• **The requested public record does not exist.** Section 705 of the Right-to-Know Law states that a township is not required to create a record that does not exist. If this situation arises, the open records officer should specify in the denial why the record does not exist — for instance, by stating that the township does not produce this type of record or report or the requested record was destroyed in accordance with a record retention schedule.

The Office of Open Records will accept a statement of attestation of nonexistence of a record as "competent evidence" in appeals that you have searched in good faith to find the requested records and they do not exist. This statement can be found on Page 64. Keep in mind that this attestation is subject to the penalty of perjury if a requester can prove that the person who made the attestation knowingly lied, which is a misdemeanor of the third degree, punishable by a fine of at least $1,000 under Title 18 *(Crimes)* of the Pennsylvania Consolidated Statutes, Section 4904.

• **The public record is in the possession of a third party.** If a third-party contractor has the requested public record, the open records officer must obtain that record, or a copy, from the third party.

The open records officer may deny requests that are determined to be overly broad.

For additional guidance, see the "Judicial Decisions and Final Determinations" section beginning on Page 82.

Records Management and Retention

Townships should consider implementing a records management system to reduce the time needed to comply with Right-to-Know Law requests. This includes organizing records and regularly destroying those that are no longer required under the state's record retention schedule so that documents can be accessed quickly and easily.

The Right-to-Know Law does not address records retention. It does, however, protect local governments and officials that comply with a written record retention and disposition schedule from any damages or penalties under the law.

Keep in mind, though, that if the township receives a Right-to-Know Law request for a record that is scheduled for destruction, it must preserve and provide access to that record before destroying it.

Certain documents may contain both public and exempt information.

For more information about records retention, including copies of the state's *Retention and Disposition Schedule for Records of Pennsylvania Municipal Governments,* call the Pennsylvania Historical and Museum Commission at (717) 787-3913, RA-LocalGovernment@pa.gov, or log onto www.phmc.state.pa.us. Choose "State Archives" from the left side of the main page and then choose "Records Management" and "Local Government & Judicial System Services."

Denying a Records Request

Under the Right-to-Know Law, a township that denies access to a record must prove why the requested record is not public. Remember that a township may not deny access to a public record based on its intended use.

Section 903 of the Right-to-Know Law requires that denials be made in writing and include the following:

- a description of the record requested;
- the typed or printed name, title, business address, business telephone number, and signature of the open records officer denying access;
- the date of the response; and
- the procedure to appeal under the Right-to-Know Law.

Note that government agencies lose many appeals on a technicality, usually because they did not follow the proper procedure when issuing a denial.

Section 903 also requires the township to state specific reasons for the denial, including the section and subsection of the Right-to-Know Law or other law that supports the township's denial and why the cited exception applies to this situation. This is an essential part of a denial letter, because the Office of Open Records will rely on these citations and arguments if the denial is appealed. PSATS recommends that townships consult their solicitor when drafting a denial letter.

A denial letter that simply states, "Your request is denied," is not sufficient and, if appealed, will most likely be overruled by the Office of Open Records. The chance of withstanding an appeal would increase if a denial letter states, for example, that the records request is denied because the record is a personal cell phone number, and personal cell phone numbers are exempt from public disclosure under Section 708 (b)(6)(i)(A) of the Right-to-Know Law.

See Page 63 for a sample denial letter.

Providing a Redacted Record

Certain documents may contain both public and exempt information. In this case, Section 706 of the Right-to-Know Law authorizes townships to redact, or black out, the exempt information and grant access to the rest of the document. Redacted information could include Social Security numbers, driver's license numbers, or home, cellular, or personal phone numbers.

Please remember that if a document must be redacted, ***the township must provide a written denial letter for the portion of the record that was redacted,*** including a legal citation and reasons why the redacted information is exempt from public disclosure. The denial should note that the request is granted in part and denied in part and should state that the protected information has been redacted from the requester's copy of the document.

Appealing a Denied Request

Requesters who have been denied access to a record may file an appeal with the Office of Open Records within 15 business days of the mailing date of the township's response or deemed denial. Appeals involving criminal investigative records must be filed with the county district attorney.

Requesters who file appeals to the Office of Open Records must include a copy of their original request form, a copy of the township's denial letter, reasons why they believe the

requested record is public, and the reasons the township gave for denying the request.

After receiving an appeal, the Office of Open Records will assign an appeals officer, who may contact the township to request additional information. ***If your township receives such a request, act quickly.*** Consult the township solicitor for assistance. Keep in mind that the appeals officer is required to make a final determination within 30 days of receiving the request and that a failure to respond in a timely fashion could reflect unfavorably on the township.

The appeals officer will send a final determination to both the requester and the township. If the township loses the appeal, it will have 30 days to release the requested records or file an appeal with the court of common pleas in the county where the township is located. If the township decides not to appeal, it must release the requested records as directed by the Office of Open Records or face possible sanctions and penalties.

If a township appeals to the court of common pleas, it will not have to release the requested records until and unless the court issues a decision requiring their release. Townships may appeal a decision of the court of common pleas to the Pennsylvania Commonwealth Court.

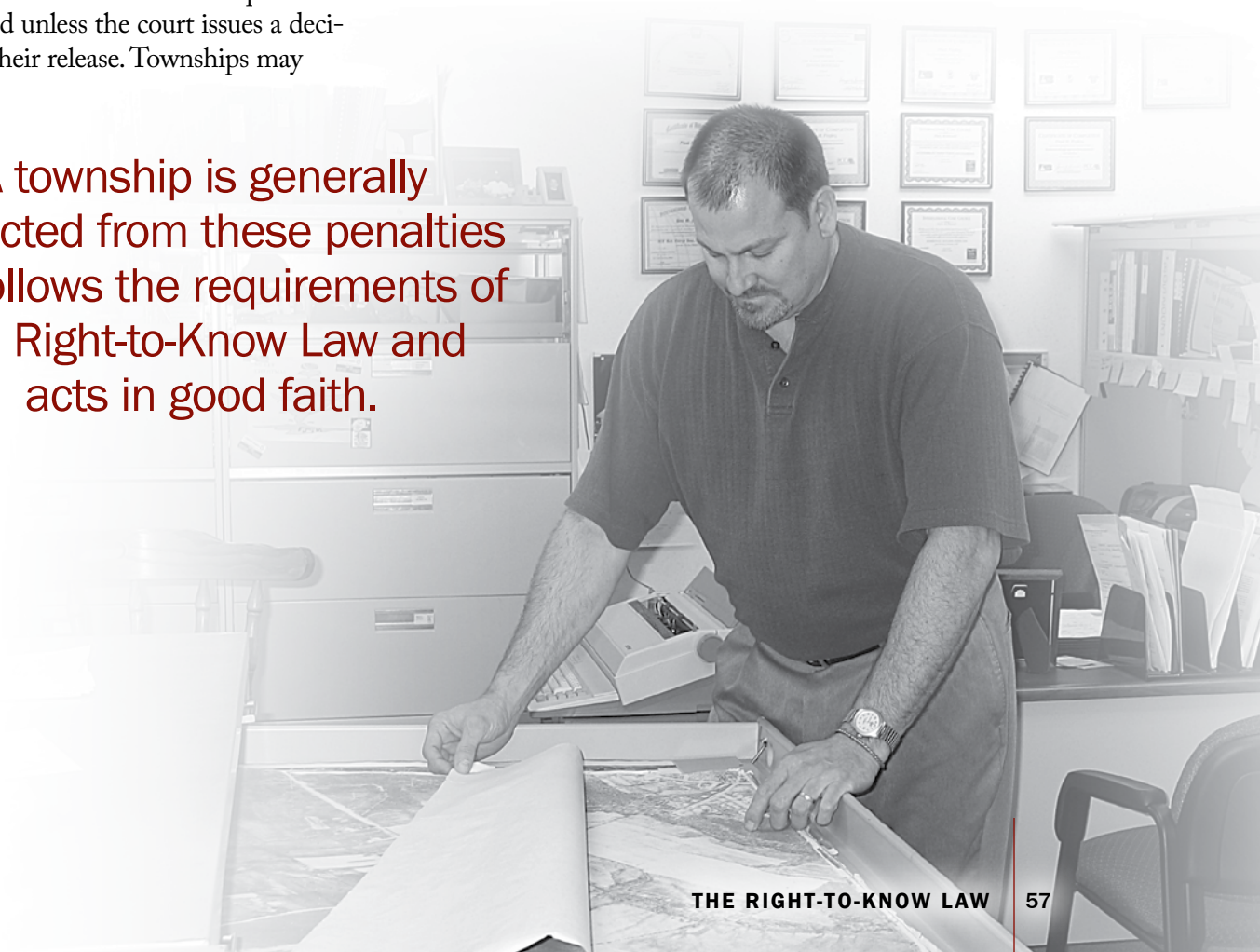
Penalties for Noncompliance

If a court reverses a township or other government agency's determination that a record is not public, it may award reasonable attorney fees and litigation costs if the agency acted willfully or with wanton disregard for the law or if the action was not based on a reasonable interpretation of the law. A township is generally protected from these penalties if it follows the requirements of the Right-to-Know Law and acts in good faith.

The court may also award reasonable attorney fees and litigation costs upon finding that a requester's legal challenge was frivolous.

An agency also faces a civil penalty of up to $1,500 if it denied access to a record in bad faith, and an agency or official that fails to promptly comply with a court order under the law can be assessed a civil penalty of up to $500 per day.

A township is generally protected from these penalties if it follows the requirements of the Right-to-Know Law and acts in good faith.



Right-to-Know Law Q&A

Q: May a township limit the number of requests that an anyone can make at one time?
A: No. Section 1308(1) of the Right-to-Know Law prohibits townships from limiting the number of records that may be requested at one time. However, a township may deny repeated requests for the same records made by the same requester.

Q: Must a township accept email requests for open records?
A: Yes. According to Section 703 of the Right-to-Know Law, townships must accept written records requests by mail, fax, email, and in person. These requests must be specific enough to allow the township to identify which records the requester is seeking.

Q: How much time do we have to respond to a written records request?
A: The township must respond in writing to a written records request within five business days of receiving it. The response must fill the request, deny the request, or state that additional time is needed to respond and provide the reason.

Townships may take up to 30 more days to fulfill or deny the request if the record must be redacted, retrieved from a remote location, or undergo a legal review or if the township has legitimate staffing limits.

Keep in mind that the state Office of Open Records has advised that "business days" are those days that a particular government agency is open for business, not simply Monday through Friday.

Q: What happens if we fail to respond to a written records request within five business days?
A: The request is deemed denied, and the requester may appeal to the state Office of Open Records. Failure to respond within five business days could also result in penalties and fines under the Right-to-Know Law.

Q: What information should the township include in a denial letter to have the best chance of withstanding the appeals process?
A: Follow the procedure described in Section 903 of the Right-to-

Know Law, which requires denials to be in writing and include a description of the record requested; the typed or printed name, title, business address, business telephone number, and signature of the open records officer denying access; the date of the response; and the procedure for the requester to appeal the denial. Many appeals are lost on a technicality, usually because the government agency did not follow the proper procedure in issuing the denial.

Section 903 also requires the open records officer to give specific reasons for the denial. This includes naming the section or subsection of the Right-to-Know Law that supports the township's argument for denying access to the record and stating why this exception applies. Consider asking your solicitor to help draft this portion of the response.

Simply stating that a phone number cannot be released, for example, would likely result in the township losing an appeal to the Office of Open Records. However, stating that the information requested is a personal cell phone number and that personal cell phone numbers are exempt from public disclosure under Section 708 (b)(6)(i)(A) of the Right-to-Know Law would increase the township's chance of success in an appeal.

A sample denial letter is provided on Page 63.

Q: Must our township provide copies of public records to companies that clearly want this information for commercial purposes?

A: Yes. The Right-to-Know Law makes no exception for commercial requests. However, the state Office of Open Records recommends sending an invoice to the company for the cost of copying any records *before* providing them, along with a letter stating that the requested information is available for pickup or will be mailed after the township receives payment *(including postage costs)*. Only send the information after receiving payment.

Q: Our state representative told us that his emails with constituents are not subject to the Right-to-Know Law. Is this also true for township supervisors?

A: No. Section 708(b)(29) of the law exempts correspondence with a member of the General Assembly, including email, from public disclosure. However, the correspondence of all other public officials, including the email of township supervisors, is generally considered to be public information. See Page 83 for more on email records.

Q: May a resident view a township employee's personnel file?

A: No. Personnel files are exempt from public disclosure under Section 708(b)(7) of the Right-to-Know Law and under the state's Personnel File Act *(43 P.S. 1321)*.

Q: Are draft minutes a public record?

A: Section 708(b)(21)(i) of the Right-to-Know Law states that draft minutes are not a public record until the next regularly scheduled meeting. In other words, even if the draft minutes are not approved at the next regularly scheduled meeting of the board of supervisors, the draft becomes a public record. Keep in mind, however, that the draft minutes do not become the *official* minutes until they are approved by the board of supervisors.

Q: Our township records its public meetings to help the township secretary prepare the minutes. Are these tapes considered public records?

A: Yes. The Office of Open Records has issued an advisory opinion stating that a township's tapes of its public meetings are considered public records. However, there is no requirement that a township record its meetings. *(Advisory Opinion 2009-003, Audio Recordings of Meetings, 2-17-09)*

Q: If we record our meetings to help the secretary prepare the minutes, do we need to keep these tapes?

A: No. However, the township should have a clear record retention policy that states how long it will maintain these tapes. If the township wants to maintain a tape only until the next public meeting, it should adopt a retention schedule stating that. However, if a resident requests access to a tape on the day it is scheduled for destruction, the township must provide access before destroying the tape.

Sample Right-to-Know Policy

Please note that this sample is for your assistance only and should not be considered a legal document. As always, consult your solicitor for a legal opinion. Keep in mind that all fees must be consistent with the fee schedule established by the Office of Open Records.

Open Records Officer

The township hereby designates *(name of individual)* as the township Open Records Officer. The Open Records Officer may be reached at *(address, phone, fax, email)*.

General

Public records shall be available for inspection, retrieval, and duplication at the township office during normal business hours, Monday through Friday, 8:30 a.m. to 4:30 p.m., with the exception of township-designated holidays.

Requests

Requests shall be made in writing to the township Open Records Officer on a form provided by the township. Requests submitted on the Pennsylvania Office of Open Records' Standard Right-to-Know Request Form will also be accepted.

Fees

Paper copies shall be *(up to 25)* cents per page per side. The certification of a record is $5 per record. Specialized documents, including but not limited to, blueprints, color copies, and nonstandard-sized documents shall be charged the actual cost of production. If mailing is requested, the cost of postage will be charged. All fees must be paid before documents will be released. Prepayment is required if the total fees are estimated to exceed $100.

Response

The Open Records Officer shall make a good-faith effort to provide the requested public record(s) as promptly as possible. The Open Records Officer shall cooperate with those requesting records to review and/or duplicate original documents while taking reasonable measures to protect original documents from the possibility of theft, damage, and/or modification.

Contact Information for Appeals

If a written request is denied, the requester has the right to file an appeal in writing to Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North St., Plaza Level, Harrisburg, PA 17120.

Appeals of criminal records shall be made to the District Attorney of _____ County. *(Note: This sentence is only necessary for townships with a police department. Include the district attorney's name, address, and telephone number.)*

Appeals Process

Appeals must be filed within 15 business days of the mailing date of the township's response. Please note that a copy of the requester's original Right-to-Know *request* and the township's denial letter must be included when filing an appeal. The law requires an appeal to include reasons why the record is a public record and to address the reasons for denial that the township stated in its denial letter.

Visit the Office of Open Records Web site at http://openrecords.state.pa.us for additional information on filing an appeal.

Sample Records Request Form

Date:_____

Name* _____

Address _____

City _____ **State** _____ **Zip** _____

Phone (____) _____ **Email** _____

** Although anonymous verbal or written requests may be filled, the request must be in writing and a name provided for the requestor to pursue relief and remedies under Act 3 of 2008.*

Records Requested:
(Please provide as much detail as possible. For more space, continue on back.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

Do you want to inspect the records at the township office? ❑ Yes ❑ No

Do you want copies of the records? ❑ Yes ❑ No

Do you want certified copies of the records? ❑ Yes ❑ No

How would you like to receive the records?

❑ Pick up – Format: _____ ❑ Mail – Format: _____

❑ Fax: (_____) _____ ❑ Email: _____

Records will be provided in the requested format, if available, after payment is received.

FOR OFFICE USE ONLY:

Request submitted by: ❑ Email ❑ U.S mail ❑ Fax ❑ In person

❑ Appropriate third parties notified and given opportunity to object

Fees: Copies Postage Certification

Other *(specify)* _____

Total Cost: $_____ Fees Received: ❑ Yes ❑ No

Date Request Received by Township: _____

Date Response Due to Requester: _____

Date Request Filled: _____

Records were: ❑ Picked up ❑ Faxed ❑ Mailed ❑ Emailed ❑ Uploaded

Signature of Open Records Officer: _____

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: _____

REQUEST SUBMITTED BY: ☐ E-MAIL ☐ U.S. MAIL ☐ FAX ☐ IN-PERSON

REQUEST SUBMITTED TO (Agency name & address):_____

_____

NAME OF REQUESTER :_____

STREET ADDRESS:_____

CITY/STATE/COUNTY/ZIP(Required): _____

TELEPHONE (Optional):_____ **EMAIL (optional):**_____

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information.* ***Please use additional sheets if necessary***

DO YOU WANT COPIES? YES or NO
DO YOU WANT TO INSPECT THE RECORDS? YES or NO
DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO
DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS $100? YES or NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

_____

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

□ I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

Sample Records Request Denial Letter

(Place on township letterhead)

Date

Requester Name
Address
Telephone Number

Dear [*Requester*]:

Thank you for writing to [*township name*] with your request for township documents pursuant to the Pennsylvania Right-to-Know Law.

On [*date received by agency*], you requested [*describe records requested or restate the request*]. Your request is denied for the following reasons, as permitted by Section 708 of the law.

[*Township name*] has denied your request because [describe specific type of record] is exempt from disclosure. [*Cite the applicable section of the Right-to-Know Law or other statute, regulation, or court case that precludes release. Include reasoning or argument why this particular record is exempt from access.*]

You have a right to appeal this denial in writing to Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North St., Plaza Level, Harrisburg, PA 17120.

[For criminal records, direct the requester to appeal to the district attorney. Provide the district attorney's name, address, and phone number.]

If you choose to file an appeal, you must do so within 15 business days of the mailing date of this response. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. The law also requires that you state the reasons why the record is a public record and address the reasons given by the township for denying your request. Visit the Office of Open Records Web site at http://openrecords.state.pa.us for further information on filing an appeal.

If you have additional questions, please call me at the number below. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

SIGNATURE
RIGHT-TO-KNOW OFFICER NAME [*information required to be typed*]
TITLE [*information required to be typed*]
BUSINESS ADDRESS [*information required to be typed*]
BUSINESS TELEPHONE [*information required to be typed*]

ATTESTATION OF NONEXISTENCE OF RECORD
[For Use in Appeals to Pennsylvania Office of Open Records]

Date: _____

Agency: _____

Requester: _____

Records Requested: _____
_____
_____
_____

OOR Appeal Dkt #: _____

I, _____ am this agency's _____
[Print name] [Print job title]

and I make this statement under penalty of perjury as more fully set forth in 18 Pa. C.S. § 4904.

I attest that I have searched the agency's files to the best of my ability and that the records requested as set forth above do not exist. It is understood that this does not mean that the records do not exist under another spelling, another name, or under another classification.

My contact information, including telephone number and email address, is:

_____
_____
_____

By: _____
[Signature]

The Text of the Right-to-Know Law

Act 3 of 2008

Effective Date: All sections of the law took effect by January 1, 2009. (This replaces Pennsylvania's previous Right-to-Know Law, Act 212 of 1957.)

CONTENTS

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:

(1) 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 func-

tion 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 email, 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. —

(1) 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. —

(1) 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).

Section 708. Exceptions for public records.

(a) Burden of proof. —

(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.

(2) The burden of proving that a legislative record is exempt from public access shall be on the legislative agency receiving a request by a preponderance of the evidence.

(3) The burden of proving that a financial record of a judicial agency is exempt from public access shall be on the judicial agency receiving a request by a preponderance of the evidence.

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

(1) A record the disclosure of which:

(i) would result in the loss of Federal or State funds by an agency or the Commonwealth; or

(ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(ii) lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.

(5) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and

unemployment compensation; or related information that would disclose individually identifiable health information.

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

(A) A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal email addresses; employee number or other confidential personal identification number.

(B) A spouse's name; marital status, beneficiary or dependent information.

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

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

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

(7) The following records relating to an agency employee:

(i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.

(ii) A performance rating or review.

(iii) The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.

(iv) The employment application of an individual who is not hired by the agency.

(v) Workplace support services program information.

(vi) Written criticisms of an employee.

(vii) Grievance material, including documents related to discrimination or sexual harassment.

(viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.

(ix) An academic transcript.

(8) (i) A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.

(ii) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.

(9) The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency.

(10)(i) A record that reflects:

(A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

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

(ii) Subparagraph (i)(A) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.

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

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

(11) A record that constitutes or reveals a trade secret or confidential proprietary information.

(12) Notes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.

(13) Records that would disclose the identity of an individual who lawfully makes a donation to an agency 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, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

(14) Unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material and scholarly correspondence of a community college or an institution of the State System of Higher Education or a faculty member, staff employee, guest speaker or student thereof.

(15)(i) Academic transcripts

(ii) Examinations, examination questions, scoring keys or answers to examinations. This subparagraph shall include licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Complaints submitted to an agency.

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

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

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

(v) Work papers underlying an audit.

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

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

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

(C) Constitute an unwarranted invasion of privacy.

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

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

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

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

(19) DNA and RNA records.

(20) An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

(21)(i) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency.

(ii) Minutes of an executive session and any record of discussions held in executive session.

(22)(i) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:

(A) The leasing, acquiring or disposing of real property or an interest in real property.

(B) The purchase of public supplies or equipment included in the real estate transaction.

(C) Construction projects.

(ii) This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

(23) Library and archive circulation and order records of an identifiable individual or groups of individuals.

(24) Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.

(25) A record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.

(26) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

(27) A record or information relating to a communication between an agency and its insurance carrier, administrative service organization or risk management office. This paragraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.

(28) A record or information:

(i) identifying an individual who applies for or receives social services; or

(ii) relating to the following:

(A) the type of social services received by an individual;

(B) an individual's application to receive social services, including a record or information related to an agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the agency and the identity of a caregiver or others who provide services to the individual; or

(C) eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

(29) Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbyist disclosure).

(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger.

(c) Financial records. — The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) OR (17). An agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.

(d) Aggregated data. — The exceptions set forth in subsection (b) shall not apply to aggregated data maintained or received by an agency, except for data protected under subsection (b)(1), (2), (3), (4) or (5).

(e) Construction. — In determining whether a record is exempt from access under this section, an agency shall consider and apply each exemption separately.

CHAPTER 9. AGENCY RESPONSE

Section 901. General rule.

Upon receipt of a written request for access to a record, an agency shall make a good-faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency. If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.

Section 902. Extension of time.

(a) Determination. — Upon receipt of a written request for access, the open-records officer for an agency shall determine if one of the following applies:

(1) the request for access requires redaction of a record in accordance with section 706;

(2) the request for access requires the retrieval of a record stored in a remote location;

(3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;

(4) a legal review is necessary to determine whether the record is a record subject to access under this act;

(5) the requester has not complied with the agency's policies regarding access to records;

(6) the requester refuses to pay applicable fees authorized by this act; or

(7) the extent or nature of the request precludes a response within the required time period.

(b) Notice. —

(1) Upon a determination that one of the factors listed in subsection (a) applies, the open-records officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a).

(2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice.

(3) If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

Section 903. Denial.

If an agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

(1) A description of the record requested.

(2) The specific reasons for the denial, including a citation of supporting legal authority.

(3) The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.

(4) Date of the response.

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

Section 904. Certified copies.

If an agency's response grants a request for access, the agency shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees under section 1307.

Section 905. Record discard.

If an agency response to a requester states that copies of the requested records are available for delivery at the office of an agency and the requester fails to retrieve the records within 60 days of the agency's response, the agency may dispose of any copies which have not been retrieved and retain any fees paid to date.

CHAPTER 11. APPEAL OF AGENCY DETERMINATION

Section 1101. Filing of appeal.

(a) Authorization. —

(1) If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under section 503(d) within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

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

(b) Determination. —

(1) Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).

(2) If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.

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

(c) Direct interest. —

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

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

(i) no hearing has been held;

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

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

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

Section 1102. Appeals officers.

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

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

(2) Review all information filed relating to the request. The appeals officer may hold a hearing. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.

(3) Consult with agency counsel as appropriate.

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

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

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

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

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

CHAPTER 13. JUDICIAL REVIEW

Section 1301. Commonwealth agencies, legislative agencies and judicial agencies.

(a) General rule. — Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a Commonwealth agency, a legislative agency or a judicial agency issued under section 1101(b) or the date a request for access is deemed denied, a requester or the agency may file a petition for review or other document as might be required by rule of court with the Commonwealth Court. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay. — A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

Section 1302. Local agencies.

(a) General rule. — Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) or of the date a request for access is deemed denied, a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay. — A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

Section 1303. Notice and records.

(a) Notice. — An agency, the requester and the Office of Open Records or designated appeals officer shall be served notice of actions commenced in accordance with section 1301 or 1302 and shall have an opportunity to respond in accordance with applicable court rules.

(b) Record on appeal. — The record before a court shall consist of the request, the agency's response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.

Section 1304. Court costs and attorney fees.

(a) Reversal of agency determination. — If a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the court finds either of the following:

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

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

(b) Sanctions for frivolous requests or appeals. — The court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to an agency or the requester if the court finds that the legal challenge under this chapter was frivolous.

(c) Other sanctions. — Nothing in this act shall prohibit a court from imposing penalties and costs in accordance with applicable rules of court.

Section 1305. Civil penalty.

(a) Denial of access. — A court may impose a civil penalty of not more than $1,500 if an agency denied access to a public record in bad faith.

(b) Failure to comply with court order. — An agency or public official who does not promptly comply with a court order under this act is subject to a civil penalty of not more than $500 per day until the public records are provided.

Section 1306. Immunity.

(a) General rule. — Except as provided in sections 1304 and 1305 and other statutes governing the release of records, no agency, public official or public employee shall be liable for civil penalties resulting from compliance or failure to comply with this act.

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

Section 1307. Fee limitations.

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

(b) Duplication. —

(1) 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 shall be established:

(i) by the Office of Open Records, for Commonwealth agencies and local agencies;

(ii) by each judicial agency; and

(iii) by each legislative agency.

(2) The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.

(3) Fees for local agencies may reflect regional price differences.

(4) The following apply to complex and extensive data sets, including geographic information systems or integrated property assessment lists.

(i) Fees for copying may be based on the reasonable market value of the same or closely related data sets.

(ii) Subparagraph (i) shall not apply to:

(A) a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly newspaper publication, press association or radio or television station, for the purpose of obtaining information for publication or broadcast; or

(B) a request by a nonprofit organization for the conduct of educational research.

(iii) Information obtained under subparagraph (ii) shall be subject to paragraphs (1), (2) and (3).

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

(d) Conversion to paper. — If a record is only maintained electronically or in other nonpaper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media as provided by subsection (b) unless the requester specifically requests for the record to be duplicated in the more expensive medium.

(e) Enhanced electronic access. — If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by this act, the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition

to making the records accessible for inspection and duplication by a requester as required by this act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency.

(f) Waiver of fees. — An agency may waive the fees for duplication of a record, including, but not limited to, when:

(1) the requester duplicates the record; or

(2) the agency deems it is in the public interest to do so.

(g) Limitations. — Except as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this act.

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

Section 1308. Prohibition.

A policy or regulation adopted under this act may not include any of the following:

(1) A limitation on the number of records which may be requested or made available for inspection or duplication.

(2) A requirement to disclose the purpose or motive in requesting access to records.

Section 1309. Practice and procedure.

The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this act unless specifically adopted by regulation or policy.

Section 1310. Office of Open Records.

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

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

(2) Issue advisory opinions to agencies and requesters.

(3) Provide annual training courses to agencies, public officials and public employees on this act and 65 Pa.C.S. Ch. 7 (relating to open meetings).

(4) Provide annual, regional training courses to local agencies, public officials and public employees.

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

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

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

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

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

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

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

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

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

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

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

(e) Duties. — The executive director shall ensure that the duties of the Office of Open Records are carried out and shall monitor cases appealed to the Office of Open Records.

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

CHAPTER 15. STATE-RELATED INSTITUTIONS

Section 1501. Definition.

As used in this chapter, "State-related institution" means any of the following:

(1) Temple University.

(2) The University of Pittsburgh.

(3) The Pennsylvania State University.

(4) Lincoln University.

Section 1502. Reporting.

No later than May 30 of each year, a State-related institution shall file with the Governor's Office, the General Assembly, the Auditor General and the State Library the information set forth in section 1503.

Section 1503. Contents of report.

The report required under section 1502 shall include the following:

(1) Except as provided in paragraph (4), all information required by Form 990 or an equivalent form, of the United States Department of the Treasury, Internal Revenue Service, entitled the Return of Organization Exempt from Income Tax, regardless of whether the State-related institution is required to file the form by the Federal Government.

(2) The salaries of all officers and directors of the State-related institution.

(3) The highest 25 salaries paid to employees of the institution that are not included under paragraph (2).

(4) The report shall not include information relating to individual donors.

Section 1504. Copies and posting.

A State-related institution shall maintain, for at least seven years, a copy of the report in the institution's library and shall provide free access to the report on the institution's Internet website.

CHAPTER 17. STATE CONTRACT INFORMATION

Section 1701. Submission and retention of contracts.

(a) General rule. — Whenever any Commonwealth agency, legislative agency or judicial agency shall enter into any contract involving any property, real, personal or mixed of any kind or description or any contract for personal services where the consideration involved in the contract is $5,000 or more, a copy of the contract shall be filed with the Treasury Department within ten days after the contract is fully executed on behalf of the Commonwealth agency, legislative agency or judicial agency or otherwise becomes an obligation of the Commonwealth agency, legislative agency or judicial agency. The provisions of this chapter shall not apply to contracts for services protected by a privilege. The provisions of this chapter shall not apply to a purchase order evidencing fulfillment of an existing contract but shall apply to a purchase order evidencing new obligations. The following shall apply:

(1) Each Commonwealth agency, legislative agency and judicial agency shall submit contracts in a form and structure mutually agreed upon by the Commonwealth agency, legislative agency or judicial agency and the State Treasurer.

(2) The Treasury Department may require each Commonwealth agency, legislative agency or judicial agency to provide a summary with each contract, which shall include the following:

(i) Date of execution.

(ii) Amount of the contract.

(iii) Beginning date of the contract.

(iv) End date of the contract, if applicable.

(v) Name of the agency entering into the contract.

(vi) The name of all parties executing the contract.

(vii) Subject matter of the contract.

Each agency shall create and maintain the data under this paragraph in an ASCII-delimited text file, spreadsheet file or other file provided by Treasury Department regulation.

(b) Retention. — Every contract filed pursuant to subsection (a) shall remain on file with the Treasury Department for a period of not less than four years after the end date of the contract.

(c) Accuracy. — Each Commonwealth agency, legislative agency and judicial agency is responsible for verifying the accuracy and completeness of the information that it submits to the State Treasurer. The contract provided to the Treasury Department pursuant to this chapter shall be redacted in accordance with applicable provisions of this act by the agency filing the contract to the Treasury Department.

(d) Applicability. — The provisions of this act shall not apply to copies of contracts submitted to the Treasury Department, the Office of Auditor General or other agency for purposes of audits and warrants for disbursements under section 307, 401, 402 or 403 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code.

Section 1702. Public availability of contracts.

(a) General rule. — The Treasury Department shall make each contract filed pursuant to section 1701 available for public inspection either by posting a copy of the contract on the Treasury Department's publicly accessible Internet website or by posting a contract summary on the department's publicly accessible Internet website.

(b) Posting. — The Treasury Department shall post the information received pursuant to this chapter in a manner that allows the public to search contracts or contract summaries by the categories enumerated in section 1701(a)(2).

(c) Request to review or receive copy of contract. — The Treasury Department shall maintain a page on its publicly accessible Internet website that includes instructions on how to review a contract on the Internet website.

(d) Paper copy. — A paper copy of a contract may be requested from the agency that executed the contract in accordance with this act.

CHAPTER 31. MISCELLANEOUS PROVISIONS

Section 3101. Applicability.

This Act shall apply to requests for information made after December 31, 2008.

Section 3101.1. Relation to other laws.

If the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply.

Section 3101.2. Severability.

All provisions of this act are severable.

Section 3102. Repeals.

Repeals are as follows:

(1) The General Assembly declares as follows:

(i) The repeal under paragraph (2)(i) is necessary to effectuate Chapter 17.

(ii) The repeals under paragraph (2)(ii) and (iii) are necessary to effectuate this act.

(2) The following acts and parts of acts are repealed:

(i) Section 1104 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929.

(ii) The act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law.

(iii) 62 Pa.C.S. § 106.

Section 3103. References.

Notwithstanding 1 PA.C.S. § 1937(B), a reference in a statute or regulation to the act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law, shall be deemed a reference to this act.

Section 3104. Effective date.

This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) Sections 101, 102 and 1310.

(ii) This section.

(2) Chapters 15 and 17 and sections 3102(1)(I) and 3102(2)(I) shall take effect July 1, 2008.

(3) The remainder of this act shall take effect January 1, 2009.

Right-to-Know Law Judicial Decisions and Final Determinations

Any requester who is denied access to a record by a "Commonwealth agency" or "local agency," as those terms are defined in Section 102 of the Right-to-Know Law, may appeal to the state Office of Open Records within 15 days of the denial. The Office of Open Records is charged with issuing final determinations on these appeals, which are binding on the parties. However, parties may appeal decisions of the Office of Open Records to the Commonwealth Court or the appropriate courts of common pleas, depending on whether the request was submitted to a Commonwealth or local agency.

How to read judicial decisions and final determinations

Judicial decisions and final determinations may be specific to the facts at issue in a particular situation and are based on the arguments and citations provided by the requester or the Commonwealth or local agency that issued the denial, along with any supporting documentation. The Office of Open Records may determine that a record is public because the reason cited in the denial is not applicable or the agency cited the wrong section or failed to comply with the Right-to-Know Law's requirements for denying access to a record. However, another section of the Right-to-Know Law, another statute, or a court decision might also protect that particular type of record from disclosure.

In making its decision, the Office of Open Records is prohibited from referencing a different citation or court case that may protect the record in question from disclosure. Therefore, while final determinations can provide valuable guidance about how the Office of Open Records rules on particular types of records or questions, they do not guarantee the same result for a similar record in a different situation.

If your township questions whether a requested record is public, consult with your solicitor.

About judicial decisions and final determinations

This guide is intended to serve as a resource for your township and your solicitor as you research relevant judicial decisions and final determinations.

Please note that the Commonwealth Court and Supreme Court decisions referenced in this guide are controlling on a statewide basis. Decisions from county courts of common pleas are only con-

trolling in the county in which they were made but may still have some persuasive value, especially when the issue is one of first impression for the courts.

Recent decisions and determinations

The following judicial decisions and final determinations are listed according to the section of the law they apply to, if any.

If your township questions whether a requested record is public, consult with your solicitor.

Section 102 - Definitions

Records on Personal Computers and Email Accounts May Be "Public Records"

Emails documenting agency transactions or activities that were created or received in connection with agency business may be subject to disclosure even if stored on personal computers and/or email accounts.

In ***Mollick v. Township of Worcester,*** 32 A.3d 859 (Pa. Cmwlth. 2011), there were numerous requests for emails transmitted between township supervisors on their personal computers and/or via their personal email accounts.

After the township denied the requests, the Office of Open Records ruled that the emails must be disclosed. The Montgomery County Court of Common Pleas reversed, concluding that the OOR ignored the township's determination that the records were not in its possession, custody, or control.

The Commonwealth Court held that if two or more officials exchange emails documenting agency transactions or activities created or received in connection with agency business, the emails could be records "of the agency," regardless of whether they use their personal computers or email accounts.

The court further held that the duty of open records officers does not end after they examine the computers and files in the agency's physical possession. Instead, they must also ask agency officials and employees to produce any other electronic records that could be deemed public and then conduct a good-faith review of those records to determine if they were exchanged or created for the purpose of deliberation of agency business.

In ***Barkeyville Borough v. Stearns,*** 35 A.3d 91 (Pa. Cmwlth. 2012), the Commonwealth Court ruled that emails exchanged between borough council members using their personal computers must be disclosed.

The requesters sought documents regarding two land development plans and contended that the documents existed on council members' personal computers. The borough argued that emails on privately owned computers are not public records.

Regarding whether the emails were public records, the court held that the "true inquiry is whether the document is subject to the control of the agency," and the emails here were subject to the borough's control because the borough carries out its business through its council members.

The borough contended that the emails were private property and relied on the Commonwealth Court's decision in ***In re Silberstein,*** 11 A.3d 629 (Pa. Cmwlth. 2011), in which the court held that emails between two township commissioners and private citizens were not subject to disclosure. The court rejected that argument, holding that the emails were "created by public officials, in their capacity as public officials, for the purpose of furthering Borough business." The court further held, "If this Court allowed Council members to conduct business through personal email accounts to evade the

RTKL, the law would serve no function and would result in all public officials conducting public business via personal email."

However, in ***Easton Area School Dist. v. Baxter,*** 35 A.3d 1259 (Pa. Cmwlth. 2012), the Commonwealth Court ruled that emails are not automatically "public records" when they are sent or received using an email address provided by an agency or stored on an agency-owned computer.

The requesters sought emails sent between the school district-maintained email accounts of the school board members, superintendent, and a general school board account. The school district argued that any email sent to or from an individual school board member's official email address could not be a record because individual board members have no authority to transact business or act on behalf of the entire board. The court rejected that argument, finding that an individual acting in his or her official capacity still constitutes agency activity when discussing agency business. Therefore, such documents are subject to disclosure.

But, the court held that personal emails, even if on an agency-owned computer, are not records because they do not document a transaction or activity of the agency. Thus, the court held that such personal records need not be disclosed.

Records Subject to Attorney-Client "Privilege"

In ***Levy v. Senate of Pennsylvania,*** 65 A.3d 361 (Pa. 2013), the Supreme Court affirmed the applicability of the attorney-client privilege to protect against disclosure of client identities and descriptions of legal services in responding to requests.

The Senate's open records officer provided documents in response to a request relating to the retention of outside lawyers to represent members and employees of the Senate Democratic caucus. However, large portions of the documents, including invoices, were redacted on the basis of privilege.

On appeal, the Commonwealth Court held that client identities and general descriptions of legal services are generally not protected from disclosure. As a result, it required disclosure of some of the redacted information, but not all.

The Supreme Court likewise held that a client's identity is generally not privileged but that the privilege may apply in instances where divulging the identity would disclose legal advice or confidential communications. The Supreme Court stated that case-specific determinations will be necessary to decide the appropriateness of client identity redactions.

The Supreme Court also approved of the Commonwealth Court's line-by-line analysis of invoices to determine whether the disclosure of descriptions of legal services rendered would result in disclosure of privileged information.

In ***City of Pittsburgh v. Silver,*** 50 A.3d 296 (Pa. Cmwlth. 2012), the Commonwealth Court held that the Office of Open Records could not compel the disclosure of documents in a solicitor's case file.

In this case, a reporter sought copies of correspondence contained in a solicitor's file regarding the city's efforts to settle litigation. Over the city's objection, the OOR and trial court ruled that the documents must be disclosed.

The Commonwealth Court reversed, stating that to allow ongoing requests for correspondence regarding settlement "impermissibly intrudes into the conduct of litigation" and would "interfere with the courts' sole control over the conduct of litigation." It held that the

The court held that personal emails, even if on an agency-owned computer, are not records because they do not document a transaction or activity of the agency.

RTKL does not confer authority on a hearing officer or the OOR to compel disclosure of information in attorney case files because that would infringe upon the Supreme Court's constitutional authority to regulate the practice of law.

General Invoice Descriptions Not Protected by Work-Product Privilege

In ***Levy v. Senate of Pennsylvania,*** No. 2222 C.D. 2010, 2014 WL 129222 (Pa. Cmwlth. Jan. 15, 2014), the Commonwealth Court rejected an argument made by the Senate of Pennsylvania that general descriptions on attorney invoices of work performed need not be disclosed because they are protected by the attorney work-product privilege. The court held that general descriptions such as "drafting a memo" or "making a telephone call" reveal nothing about litigation strategy or an attorney's mental impressions. It stated that where "taxpayers are footing the bill for the legal services, they are entitled to know the general nature of the services provided for the fees charged."

The court also rejected the Senate's arguments that the information was protected by grand jury secrecy rules and the criminal investigation exception.

Fire Companies May Be "Similar Governmental Entity" Subject to RTKL

In ***Houser v. Bangor Rescue Fire Co. No. 1,*** No. AP 2012-0319, 2012 WL 1825960 (Pa. Off. Open Rec. March 29, 2012), the Office of Open Records determined that the General Assembly intended the term "similar governmental entity" used in the definition of "local agency" include volunteer fire companies.

The OOR relied on decisions in which courts have held that volunteer fire companies are sufficiently governmental to qualify for immunity under the Political Subdivision Tort Claims Act and be considered governmental agencies under the Judicial Code. It also found that they "exist to perform a governmental function on behalf of local government units." Thus, they are subject to the RTKL.

Section 305 – Presumption

Section 305(a) – Generally

Records of agencies are presumed to be public and are subject to mandatory disclosure. In ***Levy v. Senate of Pennsylvania,*** 65 A.3d 361 (Pa. 2013), the Supreme Court held that the RTKL is "remedial information designed to promote access to official government information."

Section 305(a)(3) – Exemptions by Statutes, Regulations, and Court Orders

In ***Advancement Project v. Pennsylvania Dept. of Transp.,*** 60 A.3d 891 (Pa. Cmwlth. 2013), the Commonwealth Court rejected a RTKL request for the name, address, date of birth, and Social Security number of each person issued a driver's license or non-driver photo identification card.

Because the information was contained on driver's licenses, the court held that it was a type of driving record and was exempt from disclosure under Section 6114 of the Vehicle Code. As for non-driver identification cards, the court found that the same analysis applied because those cards inform that the holder is not authorized to drive.

In ***Office of Budget v. Campbell,*** 25 A.3d 1318 (Pa. Cmwlth. 2011), and ***Fort Cherry School Dist. v. Coppola,*** 37 A.3d 1259 (Pa. Cmwlth. 2012), the court ruled that the Internal Revenue Code prohibits disclosure of tax "returns" or tax "return information" such as W-2 and 1099 forms because they are confidential and cannot be disclosed. That prohibition applies even to returns in redacted form. Because they are exempt from disclosure under federal law, they are not considered public records under the RTKL.

In ***Pennsylvania Turnpike Comm'n v. Murphy,*** 25 A.3d 1294 (Pa. Cmwlth. 2011), the court held that Section 8117(d) of the Trans-

portation Act exempts records such as EZ Pass account information and vehicle movement records, and because they are exempt under that statute, they are likewise exempt under the RTKL.

In ***City of Allentown v. Brenan,*** 52 A.3d 451 (Pa. Cmwlth. 2012), an agency attempted to avoid compliance with the RTKL by arguing that a federal court issued a discovery order that precluded disclosure of documents. The court acknowledged that public records exclude those that are specifically exempted from disclosure pursuant to court order but found that the federal court's order did not exempt the records from disclosure so they should be disclosed.

The Office of Open Records has consistently held that where a third party holds a copyright on records and refuses to allow reproduction, the records are not public records subject to disclosure. ***Walkauskas v. Town of McCandless,*** No. AP 2013-1195, 2013 WL 4406425 (Pa. Off. Open Rec. Aug. 9, 2013).

In ***Chester Community Charter School v. Hardy ex rel. Philadelphia Newspaper, LLC,*** 38 A.3d 1079 (Pa. Cmwlth. 2012), the court ruled that a requester's motive for seeking information is irrelevant unless there is a separate law prohibiting disclosure and that the RTKL may be used as an alternative means to discovery in court cases.

NOTE: The Pennsylvania Supreme Court vacated this decision and remanded the matter back to the Commonwealth Court.

Section 306 – Nature of Documents

Confidentiality Agreements

In ***Mid Valley Sch. Dist. v. Warshawer,*** No. 13-CV-1528 (Lackawanna C.C.P. 2013), the trial court held that the RTKL's disclosure requirements supersede the discovery restrictions contained in a private contractual agreement between a school district and a contractor. As a result, private agreements cannot be used to shield documents from disclosure under the RTKL.

NOTE: This decision is on appeal to the Commonwealth Court.

Section 506 – Requests

Section 506(a) – Disruptive Requests

In ***Office of Governor v. Bari,*** 20 A.3d 634 (Pa. Cmwlth. 2011), the court held that two duplicative requests did not rise to the level of an unreasonable burden on the agency. The court also rejected a blanket rule that a repetitive request will be deemed unreasonably burdensome any time that it is made during a period of budgetary and staffing constraints.

In ***Borough of West Easton v. Mezzacappa,*** 74 A.3d 417 (Pa. Cmwlth. 2013), the court rejected a borough's argument that a request for approximately 50 documents was disruptive because the requester had made previous requests and the borough had a small staff. The court found that "merely because the Borough has a small, part-time staff, it does not follow that the Borough is unreasonably burdened" by the request.

Section 506(d) – Records in Possession of Former Agency Employees and Officials

In ***Breslin v. Dickinson Tp.,*** 68 A.3d 49 (Pa. Cmwlth. 2013), the court ruled that agencies do not need to inquire as to whether their former employees and officials possess agency records.

This action arose after a requester sought a copy of an email that was in the possession of the former township office manager, who agreed to provide the document if the township requested that he do so.

After the township responded that it searched records within its custody and found no responsive records, but did not reach out to the former employee, the requester appealed. The Office of Open Records held that the record was a public record and that the town-

ship must inquire of its current employees and officials, but that the RTKL did not require that the township seek the requested record from former officials or employees. The trial court affirmed.

The requester relied on Section 506(d)(3), but the Commonwealth Court found that it provides the procedure through which records that are defined as public in Section 506(d)(1) are available, not a mandate for disclosure independent of Section 506(d)(1).

The court further stated that open records officers must make a good-faith effort to determine whether a record is a public record and whether the record is in the possession, custody, and control of the agency.

The court then held that the township established that the record was not in its possession, custody, or control. It analogized to the process governing third-party civil subpoenas and found that the requester failed to demonstrate that the former employee had any duty to return the email. Further, it noted that "a holding finding such email in the agency's control raises the question of how an agency would compel such cooperation by persons no longer associated with it."

Finally, the court rejected the requester's argument that the township had a practice of seeking records from former employees and officials, finding that a record evidencing only two such instances was insufficient to establish a practice of doing so.

Section 506(d) – Records in Possession of Third Parties

In ***SWB Yankees LLC v. Wintermantel,*** 45 A.3d 1029 (Pa. 2012), the Supreme Court ruled that a private entity's records are public when an agency hires it to perform a governmental function and the records sought directly relate to the private entity's performance of that function.

A reporter requested copies of all bids for a contract to manage concessions for a baseball team owned by a municipal authority. Pursuant to that contract, SWB Yankees LLC became the municipal authority's agent and the exclusive manager of all operations.

The court found that "merely because the Borough has a small, part-time staff, it does not follow that the Borough is unreasonably burdened" by the request.

The municipal authority denied the request, stating that it did not possess the records and that because SWB was not performing a governmental function on its behalf, the records were not public records. The Office of Open Records directed the municipal authority to provide the information, and the Lackawanna County Court of Common Pleas and Commonwealth Court affirmed.

SWB argued to the Supreme Court that the management of the stadium and franchise was not a governmental function. SWB and several supporting parties claimed that affirmation of the lower courts' rulings would place a chilling effect on private entities' willingness to contract with governmental entities.

The Supreme Court held that disclosure of the bids is required under Section 506(d)(1). The court found the term "governmental function" to be materially ambiguous but that a "reasonably broad construction best comports with the objective of the Right-to-Know Law, which is to empower citizens by affording them access to information."

The court further concluded that the controlling factor should be whether there has been "delegation of some non-ancillary undertaking of government." It also held that the premise that the "government-always-acts-as-government," used by the Commonwealth Court in

East Stroudsburg Univ. Foundation v. Office of Open Records, 995 A.2d 496 (Pa. Cmwlth. 2010), is too broad for purposes of Section 506 and that the General Assembly intended to narrow the category of records subject to disclosure by third parties.

Finally, the court held that it had "no difficulty holding that, where a government agency's primary activities are defined by statute as 'essential governmental functions,' and such entity delegates one of those main functions to a private entity via the conferral of agency status," non-exempted records relating to that function must be disclosed.

In ***Allegheny County Dept. of Administrative Services v. Parsons,*** 61 A.3d 336 (Pa. Cmwlth. 2013), the court applied the ***Wintermantel*** test and rejected an effort by a requester to obtain the names and dates of birth of employees of a third-party contractor that was performing social services on behalf of an agency because they were not directly related to the third party's performance of the services.

The court distinguished its decision in ***Edinboro Univ. v. Ford,*** 18 A.3d 1278 (Pa. Cmwlth. 2011), where it held that payroll records of a third party that contracted with the university were public records because they were required to comply with the Prevailing Wage Act.

The court found that a request was sufficiently specific even though it requested all emails sent and received by specific email addresses over a period of 30 days.

In ***Honaman v. Township of Lower Merion,*** 13 A.3d 1014 (Pa. Cmwlth. 2011), the court held that tax records held by an elected tax collector were not records or public records of the township because it had not contracted with the tax collector to perform a governmental function on its behalf.

Others: ***Buehl v. Office of Open Records,*** 6 A.3d 27 (Pa. Cmwlth. 2010) – A third party was not required to provide records relating to its costs for items that it sold to prison inmates at agreed-upon prices); ***Giurintano v. Department of Gen. Servs.,*** 20 A.3d 613 (Pa. Cmwlth. 2011) – A third party was not required to provide records between it and independent contractors who did not perform services for the agency.

Section 701 – Access

In ***Scott v. SEPTA,*** No. 1600, July Term 2011 (Phila.C.C.P. Aug. 3, 2012), the court addressed what is meant by a document's "original format" and ruled that an agency needed to provide the metadata for electronic records when requested.

Scott submitted a request for emails and requested them in their "original format." SEPTA provided the emails in PDF format despite the fact that many were created and stored in a different format.

After the Office of Open Records ruled that SEPTA did not violate the RTKL by producing the records in PDF format, the Philadelphia County Court of Common Pleas reversed, finding that the metadata encoded in computer files is an "indelible part of a 'public record' contained in a computer file" and an agency violates the RTKL when it converts records in order to strip them of the metadata.

In doing so, the court rejected SEPTA's argument that it had complied with Section 701, which requires that records be provided in the "medium requested" and that the records were produced electronically. The court determined that where a record is stripped of the metadata,

only part of the record is actually provided, so even if SEPTA did not violate Section 701, it violated Section 302.

Section 703 – Written Requests

Form Is Irrelevant

In ***Commonwealth, Pennsylvania Gaming Control Bd. v. Office of Open Records,*** 48 A.3d 503 (Pa. Cmwlth. 2012), the court ruled that agencies may not ignore written requests, even where they are not submitted on the agency's approved forms or to the designated open records officer.

In this case, an individual sent an email requesting "communications" and "financial data" relating to certain license applicants to a staff member in the Pennsylvania Gaming Control Board's communications office. The staff member did not respond and did not provide the request to the Gaming Control Board's open records officer.

The Gaming Control Board argued that it had no obligation to respond or produce records because the email did not state that it was a RTKL request and the request was not submitted on its approved form. The Office of Open Records ordered the release of the records, finding that agencies cannot ignore written requests simply because they do not comply with the agencies' internal policies. The OOR also found that there is no requirement that requesters reference the RTKL in a request.

The Commonwealth Court held that Section 703 provides that a "written request" may be transmitted in a number of formats and need not refer to the RTKL. The court also determined that requests do not need to be specifically addressed to the agency's open records officer; if they are not, the agencies must direct them to the officer. The intent of that provision, the court found, is to "ensure that the requester does not shop around the agency for an employee sympathetic to his request."

The court also held that a "requester's failure to follow an agency's policy on the format of a request does not allow the agency to ignore the request." Rather, Section 902(a)(5) requires the agency to notify the requester of the shortcomings in the form of the request, so that the requester can submit an acceptable one.

The court found that the Gaming Control Board should have notified the requester of its determination that the request did not comply with its policies. Its failure to do so became a deemed denial of the records request.

NOTE: This decision is on appeal to the Pennsylvania Supreme Court.

Broad "Word Search" Requests Are Not Sufficiently Specific

In ***Montgomery County v. Iverson,*** 50 A.3d 281 (Pa. Cmwlth. 2012), the court ruled that a "word search" request was too broad to enable the agency to determine which records were sought.

The request sought emails that included any of 14 different search terms. Montgomery County denied the request because the requester did not identify a time period, senders and recipients, or the subject matter. The county also argued that complying with the request would be impracticable because it would have to purchase expensive equipment and invest substantial time to review emails.

The Office of Open Records held that the request was sufficiently specific and that the county's difficulty in producing the records did not alter their character as public records. On appeal, the trial court reversed the OOR's final determination.

The Commonwealth Court affirmed the trial court, finding that the request provided no timeframe, did not identify specific individuals and email addresses, and provided "no context within which the search may be narrowed." It also found that many of the search terms were so incredibly broad that it would be difficult for the agency to reasonably respond.

Identification of Specific Types of Documents

In ***Commonwealth, Dept. of Environmental Protection v. Legere,*** 50 A.3d 260 (Pa. Cmwlth. 2012), the Commonwealth Court held that

DEP should have complied with a request that sought all determination letters and orders it issued under a specific section of the Oil and Gas Act.

DEP provided access to some of the requested records but claimed that the request was not specific and that its files were not maintained in a manner that would allow it to look for all of the records.

The Commonwealth Court rejected DEP's specificity argument because the request sought a specific type of document: DEP determination letters and orders. In addition, it did not matter that the request sought "all" such documents for a period of four years.

Not Required to Perform Legal Research

In ***Askew v. Pennsylvania Office of Governor,*** 65 A.3d 989 (Pa. Cmwlth. 2013), the Commonwealth Court confirmed that requests that require the performance of traditional legal research and analysis to form the basis of a legal opinion are not sufficiently specific.

The requester sought legislative bills that provided jurisdiction over a specific issue and argued that research is involved with fulfilling every request, so the fact that research may be needed should not be determinative. The court rejected that argument, finding that "a request that explicitly or implicitly obliges legal research is not a request for a specific document" but instead is a request for legal research with the hope that the research will locate a specific document that fits the description of the request.

Timeframes

In ***Easton Area School Dist. v. Baxter,*** 35 A.3d 1259 (Pa. Cmwlth. 2012), the court found that a request was sufficiently specific even though it requested all emails sent and received by specific email addresses over a period of 30 days. The court distinguished its decision in ***Mollick,*** stating that the "request here was not for years . . . [and] obviously sufficiently specific because the [agency] has already identified potential records included within the request."

Likewise, in ***Askew,*** 65 A.3d 989 (Pa. Cmwlth. 2013), the court confirmed that a request must have a timeframe and identify the type of documents requested in order to be sufficiently specific under Section 703.

Section 705 – Creation of Record

Pulling Information from Database Is Not Creation of a Record

In ***Commonwealth, Dept. of Environmental Protection v. Cole,*** 52 A.3d 541 (Pa. Cmwlth. 2012), the Commonwealth Court held that drawing information from a database does not constitute the creation of a record.

Here, DEP argued that Section 705 prevents it from being required to troll through raw data and organize it in the manner preferred by the requester.

The court disagreed, stating that a "record" includes information "regardless of form" and includes information contained in a database. However, the agency must only provide the information in the format in which it is available. See also ***Gingrich v. Pennsylvania Game Comm'n,*** No. 1254 C.D. 2011 (Pa. Cmwlth. Jan. 12, 2012) (unreported) (same).

In ***Commonwealth, Dept. of Environmental Protection v. Legere,*** 50 A.3d 260 (Pa. Cmwlth. 2012), the Commonwealth Court rejected DEP's argument that a request violated Section 705 because it would require DEP to compile and organize documents in a manner DEP would not ordinarily use. The court held that "it cannot be inferred from Section 705 of the RTKL that the General Assembly intended to permit an agency to avoid disclosing existing public records by claiming, in the absence of a detailed search, that it does not know where the documents are. . . ."

Agency Not Required to Compile Information from Third Parties to Redact Records

In ***Pennsylvania State Police v. McGill,*** No. 852 C.D. 2013, 2014 WL 60114 (Pa. Cmwlth. Jan. 8, 2014), the Commonwealth Court ruled that the Pennsylvania State Police did not need to comply with a request for the names of all police officers accredited by the Municipal Police Officers' Education and Training Commission because doing so would have essentially required the PSP to "create a record" in violation of Section 705.

The PSP argued that it had a list of all officers but was not able to determine which ones were engaged in undercover or covert work with their respective departments and thus entitled to have their names redacted pursuant to Section 708(b)(6)(iii). The requester argued that the PSP had to provide the names, even if doing so meant that the PSP had to contact every police department in the commonwealth to determine which names should be redacted.

The court found that in order to "obtain the information necessary to comply with the request **and** ensure that confidential information is not disclosed, the PSP cannot simply examine and compile information already in its possession." (emphasis in original) As a result, the PSP could not comply with the request without having to create a record.

Section 706 – Redaction

In ***Pennsylvania State Troopers Ass'n v. Scolforo,*** 18 A.3d 435 (Pa. Cmwlth. 2011), the requester sought documents relating to requests made by members of the PSP to engage in outside employment and the agency's response to those requests. The agency argued that some of the requests were exempt because they reflected pre-decisional deliberations and noncriminal investigations and could present personal security issues.

The court ruled that the agency must produce the records in redacted form because they were public records that were not subject to exemption and did not pose a security risk if disclosed.

Section 708 – Exceptions for Public Records

Section 708(b)(1) – Personal Security

In ***Lutz v. City of Philadelphia,*** 6 A.3d 669 (Pa. Cmwlth. 2010), the Commonwealth Court held that "[m]ore than mere conjecture is needed" in order to satisfy the personal security exemption, which provides that a record may be exempt if its disclosure will be "reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual." See also ***Delaware County v. Schaefer ex rel. Philadelphia Inquirer,*** 45 A.3d 1149 (Pa. Cmwlth. 2012).

Section 708(b)(2) – Public Safety

In ***Adams v. Pennsylvania State Police,*** 51 A.3d 322 (Pa. Cmwlth. 2012), the court ruled that agencies must establish the following two elements to successfully assert the public safety exception: 1) the record relates to a law enforcement or public safety activity; and 2) disclosure of the record would be "reasonably likely" to threaten public safety or a public protection activity.

The "reasonably likely" element must be established by more than speculation that the disclosure would cause the alleged harm. ***Carey v. Pennsylvania Dept. of Corrections,*** 61 A.3d 367 (Pa. Cmwlth. 2013).

Section 708(b)(3) – Physical Security

In ***Bowling v. Office of Open Records,*** 990 A.2d 813 (Pa. Cmwlth. 2010), the court held that the Pennsylvania Emergency Management Agency did not show that it was necessary to protect security by making sweeping redactions. The court held that agencies must make a reasonable effort to differentiate between goods and services which are reasonably likely to endanger public safety and those that do not.

Section 708(b)(6) – Personal Identification Information

In ***Office of Lt. Governor v. Mohn,*** 67 A.3d 123 (Pa. Cmwlth. 2013), the Commonwealth Court held that there is no right to privacy in one's home address but that "personal" email addresses issued by an agency are not subject to disclosure, although emails sent to or from those addresses may be disclosed.

The requester sought the identity of agency-issued email addresses, telephone numbers, and home addresses of Lt. Gov. Cawley and an employee of the Office of Lt. Governor, which denied the request to the extent it sought home addresses and personal email addresses used to communicate with other agency officials. The OLG relied on the personal security exception, raising the possibility of social engineering attacks and identity theft.

The Commonwealth Court held that there is no constitutional right to privacy in one's home address. In addition, it found that to successfully assert the personal security exception, an agency must prove that disclosure would be reasonably likely to result in a substantial and demonstrable risk of harm to the personal security of the individuals. The OLG failed to meet that burden. Therefore, the court affirmed the Office of Open Records' final determination ordering access to the home addresses.

However, the court reversed the OOR to the extent that it required the disclosure of all agency-issued email addresses for Lt. Gov. Cawley. The court found that those email addresses fall within Section 708(b)(6)(i)(A)'s exception for records containing a person's "personal email address," despite the fact that they might be used to conduct agency business. The court noted that emails from such accounts could be subject to disclosure, just not the identity of the accounts themselves.

In ***Office of Governor v. Raffle,*** 65 A.3d 1105 (Pa. Cmwlth. 2013), the Commonwealth Court held that public employees' middle names may be disclosed under the RTKL but that telephone numbers of government-issued "personal" telephones are exempt from disclosure.

In ***Raffle,*** the court found that the rationale applicable to the disclosure of home address information is equally applicable to the disclosure of agency employees' middle names. As for "personal" telephone numbers, the court analogized to its decision in ***Mohn*** and held that the fact that agency business may be transacted on an agency-issued personal telephone does not make the telephone any less personal under the RTKL. Thus, those numbers are not subject to disclosure.

In ***Pennsylvania Social Services Union, Local 688 of Services Employees Intern. Union v. Commonwealth,*** 59 A.3d 1136 (Pa. Cmwlth. 2012), the court held that agencies may not release statements of financial interest to the public without redacting personal financial information.

Birth dates are not automatically exempt under Section 708(b)(6)(i) as personal identification information. Birth dates of "all other public employees in the Personal Identification Exception" are "not entitled to the unconditional protection afforded the home addresses and birth dates of certain vulnerable or at-risk individuals such as law enforcement officers, judges, and minor children." ***Delaware County v. Schaefer ex rel. Philadelphia Inquirer,*** 45 A.3d 1149 (Pa. Cmwlth. 2012); ***Governor's Office of Admin. v. Purcell,*** 35 A.3d 811 (Pa. Cmwlth. 2011); ***Allegheny County Dept. of Administrative Services v. Parsons,*** 61 A.3d 336 (Pa. Cmwlth. 2013).

In ***Pennsylvania State Police v. McGill,*** No. 852 C.D. 2013, 2014 WL 60114 (Pa. Cmwlth. Jan. 8, 2014), the Commonwealth Court rejected the State Police's argument that releasing the names of all municipal police officers in the state or the amount budgeted by public entities for public safety would con-

stitute a safety risk. The court held that the only name of a public employee that cannot be released is that of any individual engaged in undercover or covert work.

The court held that "[w]e do not have 'classified' sections of state or municipal budgets to preclude the public from knowing the number of budgeted officers or the amount a particular community spends on public safety – citizens have a right to know how much their tax dollars are being allocated to public safety to determine if the amount is too much or too little."

Section 708(b)(7) – Employee Records

In ***Commonwealth, Dept. of Labor and Industry v. Rudberg,*** 32 A.3d 877 (Pa. Cmwlth. 2011), the court held that employee performance reviews are exempt from disclosure under the RTKL. However, it also found that reviews of unsuccessful applicants for positions may not be exempt from disclosure.

In ***Johnson v. Pennsylvania Convention Ctr. Auth.,*** 49 A.3d 920 (Pa. Cmwlth. 2012), the court ruled that grievance records are not protected from disclosure under Section 708(b)(7) because it exempts information about individual agency employees, not labor disputes.

In ***Silver v. Borough of Wilkinsburg,*** 58 A.3d 125 (Pa. Cmwlth. 2012), the court found that an employment termination letter that contained references to prior disciplinary actions could not be disclosed in its entirety because it was not part of a "final action" of the agency.

Section 708(b)(9) – Drafts

Resolutions presented for consideration at a public meeting are not drafts eligible for exemption, the court held in ***Philadelphia Public School Notebook v. School Dist. of Philadelphia,*** 49 A.3d 445 (Pa. Cmwlth. 2012). Once the agency put the draft resolutions on the agenda for the public meeting, the resolutions crossed the threshold from being drafts that were prepared internally to public records under consideration at a public meeting.

Section 708(b)(10) – Predecisional Deliberative Exception

In ***Office of Governor v. Scolforo,*** 65 A.3d 1095 (Pa. Cmwlth. 2013), the Commonwealth Court, despite finding errors by the Office of Open Records, affirmed a final determination requiring the Governor's Office to provide emails and requested calendars without redaction.

The court held that the OOR erred by holding that a calendar entry of an agency executive is "facially not deliberative" in character and cannot be exempt. Instead, it is the substance of the information, not its form, which determines whether disclosure should be made.

The OOR also erred by not considering an affidavit submitted on behalf of the Governor's Office in support of its argument that Section 708(b)(10) protected the documents. However, the court held that the affidavit was not specific enough to permit the OOR or the court to determine how disclosure of the entries would reflect the internal deliberations.

In ***Kaplin v. Lower Merion Tp.,*** 19 A.3d 1209 (Pa. Cmwlth. 2011), the court held that a communication does not necessarily need to be internal to a single agency to be covered by Section 708(b)(10). Here, the Office of Open Records ruled that the township's staff and board of commissioners were separate parties for purposes of addressing the adjudication of a conditional use application. The court stated that advice from agency staff to the board of commissioners could still be an internal, predecisional communication or deliberations between the agency and employees of another agency.

Section 708(b)(11) – Trade Secrets and Confidential Proprietary Information

To successfully assert this exception, agencies must present sufficient evidence that records are maintained in a confidential manner. ***Giurinta-***

no v. Department of Gen. Servs., 20 A.3d 613 (Pa. Cmwlth. 2011).

In ***Commonwealth, Pennsylvania Gaming Control Bd. v. Office of Open Records,*** 48 A.3d 503 (Pa. Cmwlth. 2012), the court confirmed that agencies cannot waive a third party's interest in its records.

NOTE: This decision is on appeal to the Pennsylvania Supreme Court.

In ***Office of Governor v. Bari,*** 20 A.3d 634 (Pa. Cmwlth. 2011), the court held that the Office of Open Records "should take all necessary precautions, such as conducting a hearing or performing in-camera review, before providing access to information which is claimed to reveal 'confidential proprietary information.'"

Section 708(b)(12) – Notes and Working Papers

In ***City of Philadelphia v. Philadelphia Inquirer,*** 52 A.3d 456 (Pa. Cmwlth. 2012), the court held that the schedules and calendars of agency officials were exempt from disclosure because they were created solely for the individuals' convenience and were not shared elsewhere within the agency. To determine whether a record was for the individuals' "own personal use," the documents must be used by the individuals to carry out public responsibilities personal to them.

A deemed denial does not result in a deemed waiver of an agency's right to raise exceptions as defenses on appeal to the OOR.

Section 708(b)(16) – Criminal Investigations

In ***Mitchell v. Office of Open Records,*** 997 A.2d 1262 (Pa. Cmwlth. 2010), the Commonwealth Court examined the criminal investigation exemption and held that a record detailing the execution of a search warrant was related to a criminal investigation and therefore exempt.

Likewise, in ***Coley v. Philadelphia Dist. Attorney's Office,*** 77 A.3d 694 (Pa. Cmwlth. 2013), the court held that witness statements are exempt from disclosure under Section 9106(c)(4) of the Criminal History Record Information Act. However, the court declined to "assume that immunity agreements are per se 'investigative materials' or always contain 'investigative information.'"

In ***Duffner v. Pennsylvania State Police,*** No. AP 2009-0130, 2009 WL 6504454 (Pa. Off.Open Rec. April 1, 2009), the Office of Open Records ruled that an agency was not required to disclose an arrest photograph because it was exempt as criminal investigation information. The OOR stated that the photograph was related to the criminal investigation and part of the investigation file. As a result, "[u]nless filed of record with a member of the unified judicial system, the arrest photo qualifies as a record 'relating to' a criminal investigation."

Section 708(b)(17) – Non-criminal Investigations

In ***Stein v. Plymouth Tp.,*** 994 A.2d 1179 (Pa. Cmwlth. 2010), the court upheld the agency's application of the non-criminal investigation exemption to protect the name of an individual who reported a zoning violation.

In ***Mahl v. Springfield Tp.,*** No. 853 C.D. 2011, 2012 WL 8681566 (Pa. Cmwlth. Jan. 11, 2012) (unreported), the court held that the non-criminal investigation exception applies even after the investigation has been completed.

In ***Department of Health v. Office of Open***

Records, 4 A.3d 803 (Pa. Cmwlth. 2010), the court held that the term "investigation" in Section 708(b)(17) means a "systematic or searching inquiry, a detailed examination, or an official probe. . ."

Section 708(b)(18) – Time response logs and 911 calls

In ***County of York v. Office of Open Records,*** 13 A.3d 594 (Pa. Cmwlth. 2011), the court held that the term "time response logs" as used in Section 708(b)(18) does not exempt destination addresses or cross-street information from disclosure.

Section 901 – General Rule

Five-Day Deadline Commences upon Open Records Officer's Receipt of Request

In ***Office of Governor v. Donahue,*** 59 A.3d 1165 (Pa. Cmwlth. 2013), the court held that the five-day timeframe within which an agency must respond to a request begins on the day its open records officer receives the request, not when anyone within the agency receives the request.

This case arose after the Office of Open Records issued a decision in which it concluded that the five-day timeframe begins whenever any agency employee receives the request. The Governor's Office argued that the plain language of Section 901 mandates that the open records officer must receive the request to start the clock.

In response, the OOR argued that the Commonwealth Court's decision in ***Commonwealth, Pennsylvania Gaming Control Bd. v. Office of Open Records,*** 48 A.3d 503 (Pa. Cmwlth. 2012), supports its argument that requesters and the OOR would be prevented from knowing when an appeal is timely and that agencies would be incentivized to delay forwarding requests.

The court agreed that Section 901 unambiguously states that the response timeframe does not commence until the open records officer receives a request and found that the OOR's interpretation would preclude the court from giving effect to the entirety of Section 901.

The court also found that the OOR mischaracterized its holding in ***Pennsylvania Gaming Control Bd.,*** where it held that written requests for records do not need to cite the RTKL, be submitted on a particular form, or be specifically addressed to an agency's open records officer. The court stated that it did not address in ***Pennsylvania Gaming Control Bd.*** the issue of when the response timeframe commences.

Finally, the court rejected the OOR's argument that agencies would be incentivized to delay delivery of requests to open records officers, dismissing "any notion that under our interpretation, an agency will be inclined to act in bad faith by delaying the transmission of a request from its employees to its open records officer, or to refuse to respond to a request until the request reaches its open records officer."

Good-Faith Searches

In ***Commonwealth, Dept. of Environmental Protection v. Legere,*** 50 A.3d 260 (Pa. Cmwlth. 2012), the Commonwealth Court rejected DEP's argument that it was only required to make a good-faith search. The court noted that DEP did not conduct an actual physical search of its files and, referencing Section 301, stated that there is "simply nothing in the RTKL that authorizes an agency to refuse to search for and produce documents based on the contention it would be too burdensome to do so." Therefore, agencies must conduct an actual search of their files.

Section 902 – Extensions of Time

In ***Commonwealth, Dept. of Transportation v. Drack,*** 42 A.3d 355 (Pa. Cmwlth. 2012), the Commonwealth Court confirmed that agencies must state the reasons for their need to invoke the 30-day extension provided for in Section 902. Two such reasons are the necessity of the agency to conduct a legal review and the requester's refusal to pay fees.

Agency open records officers must deter-

The court held that agencies may condition their disclosure of public records upon receipt of payment for fees where the total costs are expected to exceed $100.

mine whether a requester has complied with the agency's policies. If the requester has not complied, the open records officer must send a notice to the requester within five business days of the determination of non-compliance. ***Commonwealth, Pennsylvania Gaming Control Bd. v. Office of Open Records,*** 48 A.3d 503 (Pa. Cmwlth. 2012).

Section 903 – Denials

No Per Se Waiver Rule

In ***Levy v. Senate of Pennsylvania,*** 65 A.3d 361 (Pa. 2013), the Supreme Court overturned the Commonwealth Court's decision in ***Signature Information Solutions, LLC v. Aston Tp.,*** 995 A.2d 510 (Pa.Cmwlth. 2010), and rejected a per se rule requiring waiver of reasons not included in initial denials of requests. In this case, the Senate of Pennsylvania attempted to assert certain defenses before the Office of Open Records that it did not assert in its initial denial letter.

The Supreme Court held that the per se rule set forth in ***Signature Information Solutions*** that agencies waive all reasons for denial not asserted in an initial denial is "unnecessarily restrictive." The Supreme Court found that permitting agencies to assert new reasons for denial at the appeals officer stage would not slow down the process because final determinations still must be made within 30 days of an appeal.

The Supreme Court's concern over the lack of due process afforded to those individuals whose private information may be disclosed as a result of an agency's failure to identify all reasons for non-disclosure in an initial denial also weighed heavily on its decision to reject the per se waiver rule.

On remand in ***Levy v. Senate of Pennsylvania,*** No. 2222 C.D. 2010, 2014 WL 129222 (Pa. Cmwlth. Jan. 15, 2014), the Commonwealth Court stated that the Supreme Court was "careful not to totally reject waiver in RTKL proceedings" and held that "an agency must raise all its challenges before the fact finder closes the record." Generally, closing of the record will occur at the appeals officer stage, but in extraordinary cases where the initial reviewing court acts as the fact finder, agencies must raise all challenges before the close of evidence before the court.

Deemed Denials Do Not Result in Deemed Waivers

Expanding on the Supreme Court's decision in ***Levy,*** the Commonwealth Court ruled that an agency's failure to respond to a RTKL request does not waive its right to later raise exceptions.

In ***McClintock v. Coatesville Area School Dist.,*** 74 A.3d 378 (Pa. Cmwlth. 2013), the school district did not respond to any of four requests. Only after the requester appealed did the school district assert exceptions in support of its denial.

The Office of Open Records held that the school district had not altered its grounds for denial by asserting the exceptions after ignoring the requests. The trial court affirmed. After those decisions, the Supreme Court issued its decision in ***Levy.***

The requester contended that when an open records officer ignores a request, the ***Signature Information Solutions*** waiver rule should still apply. The court dismissed that argument, holding that ***Levy's*** reasoning "applies with as much

force where an open records officer fails to list a reason for non-disclosure on the agency's initial written denial as when it fails to provide a written denial at all for non-disclosure."

Thus, it held that a deemed denial does not result in a deemed waiver of an agency's right to raise exceptions as defenses on appeal to the OOR.

Citations to Legal Authority Required

In ***Saunders v. Pennsylvania Dept. of Corrections,*** 48 A.3d 540 (Pa. Cmwlth. 2012), the court held that a denial letter must state the grounds for denial with a citation to the appropriate legal authority. In that case, the agency's citations to the applicable exceptions under Section 708 were sufficient to put the requester on notice of the grounds for denial.

Burdensome Requests

In ***Commonwealth, Dept. of Environmental Protection v. Legere,*** 50 A.3d 260 (Pa. Cmwlth. 2012), the Commonwealth Court held that DEP should have complied with a request that sought all determination letters and orders DEP issued under the Oil and Gas Act.

DEP provided access to some of the requested records but claimed that the request was not specific and that its files were not maintained in a manner that would allow it to look for all of the records.

The court rejected DEP's argument that it would be extremely burdensome to locate the records. Any burden on DEP, the court found, resulted from its records tracking methods, not the request. In addition, the court held that "an agency's failure to maintain the files in a way necessary to meet its obligations under the RTKL should not be held against the requester."

Defenses Must Be Raised to Fact-finder

In ***Fort Cherry School Dist. v. Coppola,*** 37 A.3d 1259 (Pa. Cmwlth. 2012), the Commonwealth Court held that parties are limited to the arguments that they raise to the fact-finder. In that case, the court held that the requester waived arguments that he failed to raise before the Office of Open Records.

Section 1101(a) – Filing of Appeals

Requester Waiver

In ***Barnett v. Pennsylvania Dept. of Public Welfare,*** 71 A.3d 399 (Pa. Cmwlth. 2013), the Commonwealth Court held that a requester's appeal to the Office of Open Records was not deficient even though it did not address all of the reasons for denial provided by the agency.

The agency denied the request, citing several specific exceptions. The denial also included an attachment, which contained numerous other potential reasons for denial. The requester appealed to the OOR and addressed the specific reasons given by the agency and explained why those reasons were insufficient.

The court held that the appeal was sufficient and that the requester was not required to address the list of "potential" reasons for denial because the agency did not explain why or how those reasons applied to the particular request.

Requesters must tell the agency what they want in a request. They are not permitted to request records on appeal that were not part of the initial request to the agency. ***Pennsylvania Dept. of Corrections v. Disability Rights Network of Pennsylvania,*** 35 A.3d 830 (Pa. Cmwlth. 2012). Likewise, the OOR cannot refashion requests to make them conform to the RTKL. ***Pennsylvania State Police v. Office of Open Records,*** 995 A.2d 515 (Pa. Cmwlth. 2010).

Enforcement of Final Determinations

In ***Ledcke v. County of Lackawanna,*** No. 12-CV-6791 (Lackawanna C.C.P. Feb. 7, 2013), the trial court held that a requester should file a complaint in mandamus or a motion for civil contempt, instead of a petition to enforce, in order to enforce a final determination issued and not appealed.

Section 1301 – Commonwealth Agencies, Legislative Agencies, and Judicial Agencies

Standing to File Petitions for Review

In ***Meguerian v. Office of Atty. Gen.,*** No. 882 C.D. 2013, 2013 WL 6046978 (Pa. Cmwlth. Nov. 14, 2013) (unpublished), the Commonwealth Court permitted an appeal despite the fact that the party filing the appeal did not submit the RTKL request. Instead, the RTKL request was submitted by the attorney for the woman who filed the appeal. The court found that the attorney was a party in interest with a right to appeal the agency's denial of the RTKL request and permitted him to replace his client as the proper petitioner on appeal.

Sections 1302-1303 – Standard and Scope of Review for OOR Final Determinations

In ***Bowling v. Office of Open Records,*** 75 A.3d 453 (Pa. 2013), the Pennsylvania Supreme Court ruled that state courts do not need to give deference to Office of Open Records determinations when deciding RTKL appeals. Instead, they may conduct their own fact-finding. The Supreme Court also ruled that courts are not limited to the record established by the OOR but can accept additional evidence or send the matter back to the OOR for additional fact gathering.

The Supreme Court determined that the General Assembly did not intend for the OOR to be the ultimate fact-finder in RTKL disputes. In reaching that decision, the Supreme Court relied on its interpretation of the statute and the fact that where other state entities are charged with fact-finding, they must provide some measure of due process to the parties. However, OOR appeals officers have absolute discretion to not hold hearings where agencies can present evidence, which weighed against the OOR.

The Supreme Court also held that courts must be able to expand the record from what it was before the OOR. To interpret Section 1303(b) of the RTKL any other way would create a "statutory scheme that is absurd, impossible of execution, and unreasonable."

In dissent, Chief Justice Castille expressed strong views regarding the RTKL, stating that the General Assembly has left parties with the "worst of worlds: an incomplete or unsatisfactory administrative process that all too often forces unready and fact-bound merits disputes into the court system."

Section 1304 – Court Costs and Attorney Fees

In ***Staub v. City of Wilkes-Barre,*** No. 2140 C.D. 2012, 2013 WL 5520705 (Pa. Cmwlth. Oct. 3, 2013) (unpublished), the court upheld an order directing an agency to pay 10 percent of the costs incurred by the requester to appeal a denied request.

In this case, the agency requested information from a third party in order to respond to a request. The third party refused to turn over any records based on its belief that they were not public and the agency merely forwarded the third party's response to the requester.

The court held that the agency did not fully discharge its duty by merely forwarding the request to the third party and then providing its response to the requester. Instead, the agency had a duty to independently determine the existence or non-existence of the records but failed to do so. As a result, the court ruled that the trial court did not err in imposing sanctions against the agency.

Section 1307 – Fee Limitations

Section 1307(f) – Waiver of Fees

In ***Commonwealth, Dept. of Public Welfare v. Froelich,*** 29 A.3d 863 (Pa. Cmwlth. 2011), the court held that where an agency wishes to deny a request for the waiver of duplication fees, it must state a non-discriminatory reason for the denial. Reasons for non-waiver are considered non-discriminatory unless they violate a constitutional, contractual, statutory, or regulatory right of the requester. See also ***Prison Legal***

News v. Office of Open Records, 992 A.2d 942 (Pa. Cmwlth. 2010).

Section 1307(g) – Labor Costs Not Recoverable

In ***State Employees' Retirement System v. Office of Open Records,*** 10 A.3d 358 (Pa. Cmwlth. 2010), the court ruled that agencies cannot charge requesters for time spent by their employees to respond to a request.

Section 1307(h) – Prepayment

In ***Commonwealth, Dept. of Transp. v. Drack,*** 42 A.3d 355 (Pa. Cmwlth. 2012), the court held that agencies may condition their disclosure of public records upon receipt of payment for fees where the total costs are expected to exceed $100. However, in ***Borough of West Easton v. Mezzacappa,*** 2013 WL 3156520 (Pa. Cmwlth. June 12, 2013) (unpublished), the Commonwealth Court ruled that an agency could not deny a pending request because the requester owed fees generated from prior requests.

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If paying by credit card, you may fax the form to PSATS at (717) 763-9732.

Pennsylvania State Association
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