



Act 3 of 2008 Right-to-Know Law Summary

Senator Elisabeth J. Baker, 20th District

APPLIES TO:

Commonwealth Agencies

Judicial Agencies

Legislative Agencies

MAJOR CHANGE FROM PREVIOUS STATUTE

Creates a presumption that government agency records, many legislative records and financial records are public. Places burden on the agency to prove they are not public.

Commonwealth agencies include:

- Executive Branch Agencies
- Attorney General
- State Treasurer
- Auditor General
- Independent agencies and state-affiliated agencies such as PHEAA and entities established by PHEAA, the Turnpike, SSHE and community colleges.
- Local agencies include political subdivisions, boards, authorities and similar entities.

Judicial agencies include:

- Courts or offices of the unified judicial system.

Note: Judicial agencies are required to provide only financial records under the act.

Legislative agencies include:

- House of Representatives and the Senate
- Related agencies such as the Legislative Reference Bureau, Legislative Budget and Finance Agency and Local Government Commission.

There is no presumption that all records of the legislature are open; however, legislative records that are explicitly public in the law include:

1. Financial records.
2. Bills or resolutions and amendments offered thereto in committee or on the floor.
3. Fiscal notes.
4. Co-sponsorship memos.
5. The journal.
6. Minutes, record of attendance and recorded votes of a committee meeting.
7. Transcripts of public hearings if transcribed.
8. Executive calendar.
9. Chamber rules.
10. All recorded session votes.
11. Administrative staff manuals or written policies.
12. Audits of the legislature under Act 151.
13. Final or annual reports to the General Assembly.
14. Legislative Budget and Finance Committee reports.
15. Session and marked calendars.
16. Record communicating official appointment of a legislative appointee.
17. Record communicating resignation of a legislative appointee.
18. Proposed regulations.
19. Results of polling funded by the legislative agency.

State-Related Institutions

- Institutions such as Temple, Pitt, Penn State and Lincoln University are required to file the information currently provided to the IRS on Form 990. All but PSU currently file the 990.
- Additional requirement mandates reporting of the salaries of all officers and directors and the top 25 highest paid employees. Excludes reporting of individual donors.

Who can request a public record?

- A legal resident of the United States may request a document from an agency. A political subdivision is an eligible requestor. Allows e-mail requests.

Required Response Time

- Reduces response time for state agencies to provide a record from 10 to 5 days. Maintains current 5 day period for local agencies.

Office of Open Records

- Establishes the Office of Open Records in the Department of Community and Economic Development.
- Executive Director shall be appointed by the Governor for a six-year term.
- Prohibits the director from serving in any other political office for one year after his term expires. Allows the director to appoint his/her own staff.
- Compensation of the director and staff shall be established by the Executive Board.
- Appropriation for the office shall be a separate line item under the jurisdiction of the Executive Director.

The Office of Open Records has the following duties:

1. Develop uniform forms.
2. Issue advisory opinions.
3. Provide training including regional training.
4. Appoint hearing officers to handle appeals.
5. Establish a mediation program.
6. Establish a website.
7. Establish fees for Commonwealth and local agencies based on fees charged by business entities. Fees shall be reviewed bi-annually.
8. Report annually to the General Assembly.

Exceptions

Records that:

1. Would result in loss of federal funds or create physical risk to a person.
2. Relate to military, homeland security, national defense, law enforcement or public safety.
3. Endanger safety or security of a person, building, utility, infrastructure, facilities or information storage.
4. Endanger computer hardware or software or jeopardize computer security.
5. Medical or psychiatric history, disability status, prescriptions, test results, drug test results, vocational rehabilitation, workers' compensation services, education services, services to the elderly, victims' services and unemployment compensation services.
6. An individual's social security number, driver's license number, personal financial information (does not include salary), personal phone numbers, personal e-mail address, spouse's names, beneficiaries and dependents, date of birth if requested to confirm the identity of an individual.

7. Letters of reference, academic transcripts, performance ratings, civil service or other tests administered by the Commonwealth or a legislative or judicial agency. Allows local test scores to be disclosed unless exempt by collective bargaining. Exempts failing test scores. Exempts grievances and disciplinary actions, except arbitration and final actions that result in demotion or discharge. Exempts an employment application of a person who did not subsequently get the job.
8. Strategy or negotiations relating to a labor agreement. Arbitration transcripts and opinions. Orders and awards are open.
9. Draft bills, resolutions, regulations.
10. Internal pre-decisional deliberations and strategies to achieve adoption of policies.
11. Trade secrets or confidential proprietary information.
12. Notes and working papers of officials, phone routing and message slips.
13. Donor identification.
14. Lecture notes, unpublished manuscripts and research material of institutions of higher education.

15. Exam questions, scoring keys.
16. Criminal investigative information.
17. Non-criminal investigative information.
18. 911 calls unless the agency determines the public interest outweighs the private interest.
19. DNA and RNA.
20. Autopsy reports, pictures, video and audio recordings.
21. Minutes of executive sessions and draft minutes until the next regularly scheduled meeting.
22. Contents of real estate appraisals prior to the sale or lease of the real estate.
23. Library archived and museum materials.
24. Location of archeological sites and endangered plants or animals.
25. Procurement deliberations until the award is made or all bids rejected.
26. Communications with insurers.
27. Individual social service information.

28. Constituent mail sent to another agency. Does not include correspondence from lobbyists.
29. A record identifying the name, home address or date of birth of a child 17 years of age or younger.

Agency Requirements – Appeals

- **Requires each agency to have an appeals officer to handle appeals of an agency denial or grant of records. For most Commonwealth and local agencies, the appeals officer is appointed by the Office of Open Records established in DCED. The Attorney General, Auditor General and Treasurer shall appoint their own appeals officer and conduct the administrative appeal. Allows the district attorney of a county to appoint an appeals officer to hear an appeal of denial of a record that involves criminal investigative information held by a local agency. The legislature and the judiciary appoint their own appeals officer.**
- **Maintains current final appeals to Common Pleas Court or Commonwealth Court.**
- **Requires an agency to provide notice of a request for a trade secret or confidential proprietary information to the third-party that provided the record to the agency.**
- **When an appeals officer orders the release of documents there shall be an automatic stay pending appeal.**

Agency Requirements – Appeals

- **If a public record is in the control of a third party contractor, the agency shall assess the duplication fee and remit it to the party in possession of the record if the party duplicated the record.**
- **Allows court reporters to charge their contract duplication fee until an adjudication is finally resolved. Thereafter, the fee established by the Office of Open Records shall apply.**
- **Deletes the current criminal penalty for a violation of the act.**
- **Establishes a civil penalty of \$1,500. Adds bad faith to the standards that require the payment of attorney's fees.**
- **Allows an agency to charge market value for complex and extensive data sets. Newspapers and nonprofit educational institutions will only pay regular duplication charges.**

Lastly...

- Requires that all Commonwealth contracts be transmitted to Treasury and posted on an Internet website, except contracts protected by a privilege. The executing agency is responsible for redacting personal information from the contract. Applies to contracts entered into after the effective date of the act.
- Contracts submitted for audit or warrants are not public. Paper copy of contracts shall be obtained from the agency.
- Repeals existing Right-to-Know Law.
- If the provisions of this act conflict with any federal or state law, judicial order or decree, the provisions of this act shall not apply.
- Provisions relating to posting of contracts or reporting of information by a state-related university are effective July 1, 2008.
- The creation of the Office of Open Records is effective immediately.
- The act applies to records requested beginning January 1, 2009.