



Open Meetings/ Open Records

The Sunshine Act
and the Right to Know Law



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and the Right to Know Law

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I. Open Meetings: The Sunshine Act

State legislatures across the country have adopted laws requiring that certain meetings be open to the public. These laws have been symbolically termed Sunshine Laws. There are numerous advantages to having such statutes. Sunshine Laws help curtail misbehavior by government officials, educate the public through greater press coverage of government activities and provide public scrutiny to governmental decision-making. Public officials also are able to gain a better understanding of public opinion on the issues. Moreover, open meetings can enhance public faith in the political process.

Overview of Sunshine Act

The Pennsylvania Sunshine Act requires all public agencies to take all official actions and conduct all deliberations leading up to official actions at public meetings. The Act covers all such actions by municipal governing bodies, committees of these governing bodies and municipal boards and commissions. The General Assembly, state executive branch agencies, school boards, authorities and boards of public colleges and universities also are covered by the Sunshine Act. Official actions include making recommendations, establishment of policy, decisions on agency business and votes taken on any motion, resolution, ordinance, rule, regulation, proposal, report or order.

The current Sunshine Act took effect on January 3, 1987. This law replaces the old Open Meetings Laws of 1957 and 1974. Under the old law, public agencies were required to hold open meetings only if votes were taken or official policy adopted. This led to the frequent abuse of discussing and deciding issues in so-called “workshop” sessions, with the official public meetings being relegated to conducting formal votes on issues already decided in advance. The current Act requires that any deliberations leading up to official actions also take place at public meetings. Municipal governing bodies have no authority, either under the municipal codes or the Sunshine Act, to conduct “workshop” sessions.¹

References

1. *Paciotti v. Corcoran*, 95 Lackawanna Jur. 6, 1994.

Agencies

The “agency” is defined as the governing body, and all committees authorized by the body to take official action and render advice on agency business. This includes state agencies as well as political subdivisions, school districts and municipal authorities. As defined in the Statutory Construction Act, political subdivision includes any county, city, borough, incorporated town, township, school district, vocational school district and county institution district.¹ The term agency includes the political subdivision and all its constituent boards and commissions. All municipal governing bodies and their committees are covered by the Act. But where a committee is appointed by the governing body, but none of its members are members of the governing body, it does not qualify as a committee for purposes of the Act.² In this case, Reading City Council had appointed an advisory committee to evaluate private ambulance service contractors. The members of the committee were three members of the fire department and an assistant city solicitor. The court ruled that because no members of council served on the committee, it could not be considered a committee of council. In a similar ruling, a committee consisting of the township manager, engineer and solicitor appointed by the board of supervisors was found not to be a committee of the board, and thus not an agency under the Sunshine Act.³ The committee reviewed a development plan and met with the developer to discuss compliance with township ordinances in

closed sessions. Likewise, in a decision involving a trial court nominating commission, the court held the commission was not an agency under the Sunshine Act because it was advisory, established for a limited purpose, lacked authority to make binding recommendations to the Governor, and thus lacked the essential characteristics of an agency.⁴ This decision also established that an individual, the Governor in this case, does not constitute an agency under the Sunshine Act.

In another case, an economic development corporation was held to be an agency within the meaning of the Sunshine Act even though it was a private nonprofit corporation.⁵ The court said that for the purpose of the Act, an agency was what the legislature defined as an agency. The legislature had enacted a law making the nonprofit corporation that leased rental property to the Commonwealth subject to the Sunshine Act. A county court determined a nonprofit organization assisting with health, education and social support service to benefit at-risk youth was not an agency under the Sunshine Act.⁶ The organization was not performing an essential governmental function nor empowered to take official action to achieve those goals.

References

1. 1 Pa.C.S.A. 1991.
2. *Gowombeck v. City of Reading*, 48 D.&C.3d 324, C.P. Berks Co.
3. *Alesander v. Board of Supervisors of East Whiteland Township*, 41 Chest Co. Rep. 29, 1992.
4. *Ristau v. Casey*, 647 A.2d 642, Pa.Cmwlt., 1994.
5. *Harristown Development Corporation v. Commonwealth*, Department of General Services, 614 A.2d 1128, 532 Pa.45, 1992.
6. *Nesser v. Cities in Schools in Fayette County*, 17D.&C.4th 242, 1992.

Meetings

The Sunshine Act defines a “meeting” as any prearranged gathering of an agency attended by a quorum of members held for the purpose of deliberating agency business or taking official action. “Deliberation” means the discussion of agency business held for the purpose of making a decision. “Agency business,” in turn, means framing or enacting any law or policy entering into a contract or adjudicating rights, duties and responsibilities. Administrative action is excluded from the definition of agency business.

There have been several court decisions related to these definitions found in the Sunshine Act. A court ruled unofficial gatherings of unnamed legislators did not constitute “meetings” subject to the Sunshine Law. The alleged dates of the meetings predated the establishment of a conference committee. In effect, the agency whose business was discussed, the conference committee, did not exist at the time of the meetings.¹ In another case involving the state legislature, the action of the House Rules Committee in changing the House Rules in accordance with a House Resolution adopted previously in open session was held not to constitute a violation of the Sunshine Act. The activity of the Rules Committee was found to be ministerial action to carry out the decision made by the full House.²

However, a conference to discuss a zoning ordinance attended by a quorum of a board of supervisors constituted “deliberation of agency business” and violated the Sunshine Law.³ In this case, a newly appointed member of the board of supervisors felt himself unprepared for consideration of a proposed zoning change on the agenda for that evening's meeting. In the afternoon, he met with the developer proposing the change and one of the other two supervisors for a review of the proposal. The court cited a prior decision saying that township supervisors are not restricted to information furnished at public meetings. They have the right to study, investigate, discuss and argue problems and issues prior to the public meeting at which they vote. Supervisors are not restricted to communicating with citizens represented; they can talk with interested parties, including applicants for zoning changes.⁴ The activities at this afternoon meeting clearly amounted to deliberation on the proposed zoning change, which as a pending ordinance constituted agency business. The presence of the second supervisor in this instance brought the conference under the definition of a meeting in the Sunshine Act

because the group now consisted of a quorum of the agency's members assembled for the purpose of deliberating on agency business. This gathering constituted a meeting in violation of the Sunshine Act.

In another case, the court drew a distinction between deliberations and discussion. The court ruled the informal discussion of a budget by school board members did not violate the Sunshine Law.⁵ There was no evidence that clearly established that budget issues were discussed by some school board members during a brief recess in a school board meeting. There was no indication that any gathering of members included more than a quorum of the board. The court held a school board member is not prohibited by the Sunshine 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. A member's activities in inquiring, questioning and learning about issues are not restricted to public meetings.

In another school district case, a reorganization plan resulting in 20 furloughs was challenged on the basis of the violation of the Sunshine Act.⁶ The decision to accept the reorganization plan was made by the school board at a public meeting on June 13, 1988, following a long series of meetings with the teaching staff and the public. The only meetings alleged to have violated the Sunshine Act occurred January 19 and January 25. The January 19 meeting was an executive session to discuss personnel matters with a quorum present. There was no evidence of a quorum at the January 25 meeting and no indication that the reorganization plan was discussed other than an explanation by the superintendent of how he intended to meet with the affected staff. The court ruled that people bringing the action failed to meet their burden of proof that deliberation actually occurred.

The Public Advocate contended a city gas commission had used a "script" at a meeting, demonstrating the agency had already discussed and resolved ratemaking issues prior to a public meeting. However, the court ruled the document used by the commission was an agenda and not a script.⁷ The document merely contained proposed statements and resolutions which any chair would prepare in advance of a meeting. The Public Advocate failed to meet the burden of proof the commission had private deliberations before the public meeting.

The Sunshine Act requires official actions to be taken at a public meeting. In a case involving a zoning hearing board, landowners challenged a board's refusal to permit a garage on residential property. The board members deliberated and voted on the issue at a public meeting. The court held that the fact that the written decision was not voted on and approved at a public meeting was not important, because the formal action required to be taken at the public meeting under the Sunshine Act was the actual vote on the decision.⁸ In a second zoning hearing board case, Commonwealth Court reiterated that the important occurrence is the voice vote of the board at a public meeting.⁹ The writing of the decision is not considered a formal action and need not be issued during a public meeting. Where a borough council voted to demote a police chief at a public meeting, the fact that charges against him were not formally voted on at the meeting was found to be of no consequence. It was clear beyond doubt that borough council knew the charges upon which their action against the police chief was based.¹⁰

A township planning commission violated the Sunshine Act by holding a closed meeting at the chair's home to review proposed changes in the township's ordinance regulating junkyards.¹¹ The planning commission had the power to make recommendations to the township on a broad range of land use matters. The planning commission's submission of a recommendation to the board of supervisors constituted official action. The planning commission's formulation of a proposal was agency business because it involved framing or preparing laws or policy. The discussion by a majority of the planning commission's members at a closed meeting constituted deliberation.

Commonwealth Court determined a school board did not violate the Sunshine Act when it voted in executive session to narrow the field of candidates for school superintendent.¹² Just because a vote is taken in executive session does not mean it is an official action. When an agency eliminates candidates in an executive session

through a “straw vote,” that vote is not an official action under the Sunshine Act, but is part of that discussion and deliberation authorized to be conducted at an executive session. The vote that constituted official action was the one committing the board to hire a specific person as superintendent. A different conclusion was reached where a school board failed to vote in a public meeting, on increasing the salary and benefits of the school superintendent.¹³ The Sunshine Act allows an agency to discuss employment matters in a private session, but the final vote must be taken at a public meeting. The term "official action" under the Sunshine Act includes decisions committing a school board to a particular course of action, in this case establishing salary and benefits for the superintendent.

A quorum must be present for a meeting to violate the Sunshine Act. A private meeting was held jointly by members of a township board of supervisors and a board of directors of a transportation authority, but the participants constituted less than a quorum of either board. The private meeting clearly included a discussion of agency business related to the proper size of a proposed transportation development district. However, since the private meeting was not attended by a quorum of either public agency, the meeting did not violate the open meeting provisions of the Sunshine Act.¹⁴ The agencies later made final decisions on the issue at properly advertised public meetings. In another case, township supervisors held a private meeting with an attorney to discuss a lawsuit filed by a former township employee. No violation of the Sunshine Act occurred because a quorum of the supervisors was not present at the meeting.¹⁵

The Pennsylvania Supreme Court has ruled the State Milk Marketing Board did not violate the Sunshine Act when it voted on a rate order by telephone conference call.¹⁶ Two of the three members of the board were physically absent from the meeting but participated using speaker phones. The court held a quorum of the board either attended or participated in the official action. This satisfied the requirements of the Sunshine Act. The court concluded a quorum of members can consist of members not physically present at the meeting, but who nonetheless participate in the meeting and that such a quorum can take official action, provided that both present and absent members can communicate with each other. It is uncertain if this ruling also applies to municipal boards and zoning hearing boards.

References

1. *Pennsylvania Legislative Correspondents' Association v. Senate of Pennsylvania*, 537 A.2d 96, 113 Pa.Cmwlth. 367, 1988, affirmed 551 A.2d 211, 520 Pa. 82, 1988.
2. *Common Cause/Pennsylvania v. Itkin*, 635 A.2d 1113, 161 Pa.Cmwlth. 15, 1993.
3. *Ackerman v. Upper Mt. Bethel Township*, 567 A.2d 1116, 130 Pa.Cmwlth. 254, 1989.
4. *Belle Vernon Area Concerned Citizens Appeal*, 487 A.2d 490, 87 Pa.Cmwlth. 474, at 481, 1985, citing *Palm v. Center Township*, 415 A.2d 990, 52 Pa.Cmwlth. 192, at 195, 1980.
5. *Conners v. West Greene School District*, 569 A.2d 978, 131 Pa.Cmwlth. 95, 1989, appeal denied 581 A.2d 574, 525 Pa. 649.
6. *Bradford Area Education Association v. Bradford Area School District*, 572 A.2d 1314, 132 Pa.Cmwlth. 385, 1990.
7. *Public Advocate v. Philadelphia Gas Commission*, 637 A. 2d 676, 161 Pa.Cmwlth. 428, 1994.
8. *Piecknick v. South Strabane Township Zoning Hearing Board*, 607 A.2d 829, 147 Pa.Cmwlth. 308, 1992.
9. *Bruno v. Zoning of Adjustment of City of Philadelphia*, 664 A.2d 1077, Pa.Cmwlth., 1995.
10. *In re Blystone*, 600 A.2d 672, 144 Pa.Cmwlth. 27, 1991; appeal denied 626 A.2d 1159.
11. *Moore v. Township of Raccoon*, 625 A.2d 737, 155 Pa.Cmwlth. 529, 1993.
12. *The Morning Call, Inc. v. Board of School Directors of Southern Lehigh School District*, 642 A.2d 619, Pa.Cmwlth., 1994.
13. *Preston v. Saucon Valley School District*, 666 A.2d 1120, Pa.Cmwlth., 1995.
14. *Frazer Concerned Citizens v. Frazer Township*, 140 P.L.J. 342, 1992.
15. *Muncy Creek Township Citizens Committee v. Shipman*, 573 A.2d 662, Pa.Cmwlth., 1990.
16. *Babac v. Pennsylvania Milk Marketing Board*, 613 A.2d 551, 531 Pa. 391, 1992; appeal dismissed 619 A.2d 1062, 533 Pa.

Administrative Action

The Sunshine Law does not require administrative action to be taken at a public meeting. “Administrative action” is defined as the execution of policies previously decided at an open meeting, but it does not include the deliberation of agency business. For example, a municipal governing body might decide to construct storm sewers in the municipality. The actual vote and deliberations leading up to the final decision, including the award of the construction contract, must take place at a public meeting. However, once these actions are taken, the administrative details of carrying out the project, such as meetings with the engineering firm or the scheduling of construction, do not have to occur at a meeting open to the public.

Where council had already officially acted to appoint a company as the official provider of ambulance service for the city and authorized the mayor to enter into an agreement with the company, meetings between company officials, the city solicitor, assistant city solicitor and fire chief were held to be administrative action for the purpose of negotiating the terms of the agreement.¹ The court found the meetings were held simply to execute council's authorization to engage the company for ambulance service.

In another case where city council had failed to adopt a budget by December 31, the mayor furloughed the entire police force because there was no agreement between the mayor and the police union to work without wages. All were eventually called back to work the following January 15 after enactment of the budget. The court ruled the mayor had authority to take action as the chief executive officer of the city, that he was forced to take action to lay off the police officers because he had no authority to pay wages without a budget.² There was no violation of the Sunshine Act. Council had discussed and defeated the proposed budget at a properly advertised public meeting. The mayor's action was administrative in nature.

When the Rules Committee of the state House of Representatives approved new expense per diems for members, the action was considered ministerial in nature.³ The Rules Committee merely executed a resolution of the full House which was passed in an open meeting, and the action fell under the administrative exemption of the Sunshine Law.

The Sunshine Act also permits boards of auditors to conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the municipal accounts and records.⁴ However, any official action taken by such boards must be taken at public meetings.

References

1. *Gowombeck v. City of Reading*, 48 D.&C.3d 324, C.P. Berks Co., 1988.
2. *Fraternal Order of Police, Flood City Lodge, No. 86 v. City of Johnstown*, 594 A.2d 838, 140 Pa.Cmwlth. 644, 1991.
3. *Common Cause/Pennsylvania v. Itkin*, 635 A.2d 1113, 161 Pa.Cmwlth. 15, 1993.
4. 65 P.S. 277(c); Sunshine Act, Section 7(c).

Executive Sessions

An executive session is a meeting from which the public is excluded. That means it is a prearranged gathering attended by a quorum of members for deliberating agency business, but one from which the agency may legally exclude the public. The Act enumerates six reasons for holding executive sessions.¹ Briefly stated, they are as follows.

1. To discuss personnel matters, including hiring, promoting, disciplining, or dismissing specific public employees or officers, but not including filling vacancies in any elective office.
2. To hold information, strategy and negotiation sessions related to collective bargaining agreements or arbitration.

3. To consider the purchase or lease of real estate.
4. To consult with an attorney regarding litigation or issues where identifiable complaints are expected to be filed.
5. To discuss agency business that would lead to disclosure of information recognized as confidential or privileged under law including initiations and conduct of investigations of possible violations of the law and quasi-judicial deliberations.
6. For public colleges or universities to discuss matters of academic admission or standings.

Executive sessions may be held during the recess of a public meeting, at the conclusion of such meetings, or announced for some future time. The reason for holding an executive session must be announced at a public meeting occurring immediately prior or subsequent to the executive session. There is no time limit placed on the length of an executive session. In those cases where an executive session is not announced for a future time, agency members must be notified of the executive session 24 hours in advance. Any official action taken on the basis of discussions held in an executive session must occur at an open public meeting.²

A significant court decision clarified requirements of this portion of the Sunshine Act when it ruled the reason for holding an executive session must be specific. A city council had announced an executive session to discuss matters of litigation. A newspaper objected to the closed meeting because the litigation matters were not announced with specificity. The trial court ruled the council must spell out in connection with existing litigation the names of the parties, the docket number and the court in which it is filed. Regarding identifiable complaints or threatened litigation, the court ordered council to state the general nature of the complaint, but not the identity of the complainant. The position of the trial court was upheld on appeal.³ The appellate court stated even though it is in the public interest that certain matters be discussed in private, the public has a right to know what matter is being addressed in private sessions. The reason stated by the agency must be specific, indicating a real, discrete matter that is best addressed in private.

A borough council excluded the mayor from executive sessions of council, claiming council had an absolute right to determine who could attend executive sessions. Since the mayor of a borough has a right to attend all regular and special meetings of council and may break a tie vote, a county court ruled it would be better policy to allow the mayor to attend executive sessions where no real public purpose or policy would be benefited from the exclusion.⁴ However, in the rare circumstance where a lawsuit was pending between the mayor and council, the exclusion would be legitimate and reasonable.

References

1. 65 P.S. 278(a); Sunshine Act, Section 8(a).
2. 65 P.S. 278(c); Sunshine Act, Section 8(c); *Keenheel v. Commonwealth, Pennsylvania Securities Commission*, 579 A.2d 1358, 134 Pa.Cmwlth. 494, 1990; *Bianco v. Robinson Township*, 556 A.2d 993, 125 Pa.Cmwlth. 59, 1989; *Heidelberg Township v. Heidelberg Township Zoning Hearing Board*, 106 York 26, 1992.
3. *Reading Eagle Company v. Council of the 35 City of Reading*, 627 A.2d 305, Pa.Cmwlth. 1993.
4. *Rendina v. Psenicska and Borough of Masontown, Common Pleas, Fayette County, G.D.*, July 10, 1989.

Personnel Issues

The discussion of personnel matters is a legitimate reason for holding an executive session. Personnel matters include issues 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 employed or appointed by the agency. The individual employee or appointee may request in writing that the matter be discussed at an open meeting.

The personnel exception does not apply to deliberations on filling vacancies in elective offices. The Sunshine Act was amended in 1996 to remove the personnel exception from elective office vacancies, reversing earlier court decisions upholding a school board's action in interviewing candidates and discussing their merits in executive session.¹

But executive sessions may be used in actions involving an appointed public officer.² A board of school directors voted in executive session to narrow the field of candidates for the position of school superintendent from five to three. The board later met again in executive session and narrowed the field to one candidate. At a public meeting, the board voted to hire that person. Commonwealth Court determined the school board had not violated the Sunshine Act because the final vote taken in public was the one which committed the agency to a course of action. The Sunshine Act permits an agency to discuss employment matters in private executive session, but the final vote on those issues must take place in a public meeting. Commonwealth Court ruled a school board violated the Act when it failed to vote in public on providing an increase in the salary of the school superintendent.³

A different conclusion was reached when the issue involved independent contractors rather than public officers or employees. Commonwealth Court has ruled a wastewater treatment consultant under contract to a sewer authority was an independent contractor, not an appointed officer or employee under the terms of the Sunshine Act.⁴ The personnel exception does not apply. The sewer authority violated the Sunshine Act by discussing the termination of his contract in an executive session, also by not giving the contractor an opportunity to request in writing a discussion of the issue at a public meeting.

An agency properly went into executive session to consider whether or not to enter into an agreement to accept settlement on a legal challenge to an action to terminate one of its employees.⁵ However, the agency apparently failed to return to open meeting in order to vote on the agreement, thus violating the Sunshine Act. In another case, a school board negotiated an agreement with a teacher involved in disciplinary proceedings in executive session. The teacher had requested the proceedings be conducted in private. The school board then passed a motion to suspend the teacher at an open meeting. A newspaper appealed, alleging the school board had violated the Sunshine Act by executing the agreement in private without disclosing the basis for its decision at an open meeting. The court rejected the newspaper's argument by pointing out the public's right to know must be balanced under certain situations with an individual's right to seek confidentiality concerning a disciplinary matter.⁶

Where a township held a closed executive session discussing the promotion of two police officers to the rank of sergeant, it appears the decision was improperly made during the closed session because the civil service commission was notified the next day.⁷ Official action to implement the personnel issues discussed in executive session must be made in an open public meeting.

During a public meeting, borough council held an executive session. Following the closed session, council recommenced the public meeting and voted to have the borough manager handle the personnel matter discussed during the executive session. In discussing the boundaries of the personnel exception for executive sessions, the court drew a distinction between the formulation of policy by an agency and the discussion of any specific employee. In this case, the personnel matter was within the exception since it related to a particular employee's ongoing conflict with two coworkers and the employee's request for early retirement.⁸ Council just heard the situation. The final outcome was a decision by the employee between options outlined in a letter from the borough manager sent subsequent to the meeting.

References

1. 65 P.S. 278(a)(1); Sunshine Act, Section 8(a)(1).
2. *The Morning Call, Inc. v. Board of School Directors of Southern Lehigh School District*, 642 A.2d 619, Pa.Cmwlth., 1994.
3. *Preston v. Saucon Valley School District*, 666 A.2d 1120, Cmwlth., 1995.
4. *Easton Area Joint Sewer Authority v. The Morning Call, Inc.*, 581 A.2d 684, 135 Pa.Cmwlth. 363, 1990.

5. *Keenheel v. Commonwealth, Pennsylvania Securities Commission*, 579 A.2d 1358, 134 Pa.Cmwlth. 494, 1990.
6. *Mirror Printing Company, Inc. v. Altoona Area School District*, 609 A.2d 917, 148 Pa.Cmwlth. 168, 1992.
7. *Bianco v. Robinson Township*, 556 A.2d 993, 125 Pa.Cmwlth. 59, 1989.
8. *The Morning Call, Inc. v. Council of the Borough of East Stroudsburg*, 6 D.&C.4th 321, C.P. Monroe Co., 1989, affirmed 571 A.2d 14, 131 Pa.Cmwlth. 669.

Collective Bargaining

Executive sessions may be held for 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.¹ In an action on an unfair labor practice charge, a board of school directors first approved a tentative labor agreement in a negotiating session with the teachers union, then at a subsequent public meeting of the school board failed to ratify the agreement. The school district claimed the tentative agreement had no legal effect because it did not take place in public at a duly advertised meeting. The court ruled it was never the purpose of the Sunshine Act to compel negotiation of labor contracts in the open; executive sessions are explicitly permitted for this purpose.² Where a majority of the school directors first approved the agreement, then subsequently changed their vote at a public meeting, they were found to be not negotiating in good faith.

During ongoing negotiations with the nursing home staff, the county commissioners made the decision to sell or close the county home during an executive session. The commissioners issued a press release saying the home would be closed, and only afterward at the next regularly scheduled public meeting did they adopt a resolution to close it. The court found that the decision to sell or close the home was a matter subject to collective bargaining and fell within the collective bargaining exemption for executive sessions under the Sunshine Act.³ Subsequent ratification of their action at a public meeting cured any purported infraction of the Sunshine Act due to making the decision during a closed session.

References

1. 65 P.S. 278(a)(2); Sunshine Act, Section 8(a)(2).
2. *St. Clair Area School District v. St. Clair Area Education Association*, 552 A.2d 1133, 123 Pa.Cmwlth. 62, 1989, affirmed 579 A.2d 879, 525 Pa. 236, 1990.
3. *Lawrence County v. Brenner*, 582 A.2d 79, 135 Pa.Cmwlth. 619, 1990, appeal denied 593 A.2d 426, 527 Pa. 652.

Legal Matters

Agencies may hold executive sessions to consult with their attorney regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.¹ A county court upheld a private meeting between a city council and its solicitor to discuss a legal claim filed against the city arising out of the city's actions toward awarding a contract to provide ambulance service. The meeting also discussed terms and conditions of employment for city employees currently engaged in the ambulance service.²

While discussion on legal matters can occur in executive sessions, any official action based on those discussions must be taken at an open meeting. A township board of supervisors authorized filing an appeal of a decision by a zoning hearing board at an executive session. The township never adopted or ratified this decision at a subsequent open meeting. A county court ruled this failure by the township was a violation of the Sunshine Act.³

A borough took the unusual position that its action of entering into a consent decree without ratification or approval of the borough council violated the Sunshine Act. The borough was attempting to renege on a settlement agreement requiring it to complete a water diversion project. The court ruled the borough's position was

clearly against the intent of the Sunshine Act and against public policy. The consent decree was the product of the borough's insurance carrier's legal representation of the borough. Since the borough's contract with the insurance carrier was entered into at a public meeting, the borough did not violate the Sunshine Act.⁴ To allow the borough to use its own alleged violation of the Sunshine Act to get out of its commitments under the consent decree was against public policy.

References

1. 65 P.S. 278(a)(4); Sunshine Act, Section 8GI(a)(4).
2. *Gowombeck v. City of Reading*, 48 D.&C.3d 324, C.P. Berks Co., 1988.
3. *Heidelberg Township v. Heidelberg Township Zoning Hearing Board*, 106 York 26, 1992.
4. *Weest v. Borough of Wind Gap*, 621 A.2d 1074, 153 Pa.Cmwlt. 330, 1993.

Conferences

Conferences are another exception to open meetings found in the Sunshine Act.¹ Conferences are defined as training programs or seminars, 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 of agency business is not permitted at conferences.

A county court ruled a proposed meeting between a consultant and a school board for the purpose of reviewing a report was not a conference under the Sunshine Law. The court ordered the meeting be open to the public.² The meeting was scheduled by the school superintendent to allow himself and school board members to raise questions about a report on overcrowding in district schools already prepared by an outside consultant with copies distributed to the school board members. The intent of the meeting was informational; no discussions, deliberations or formal action would be taken by the board. The court ruled the proposed meeting did not meet the definition of conference in the Sunshine Act even though it found the purpose of the meeting to be truly informational.

In another case, Commonwealth Court ruled that a meeting attended by a quorum of the board of supervisors to gather information from a developer, held for the purpose of discussing a proposed change to a zoning ordinance, was really a closed meeting which violated the Sunshine Law.³ The stated purpose of the meeting was to allow a newly appointed township supervisor to learn the background of the proposal that was to be discussed and voted on at a public meeting that evening. The court found that the actions of the attendees at the meeting clearly constituted deliberations on the proposed zoning change, since they were discussions on agency business obviously for the purpose of ultimately making a decision at some time.

While the Sunshine Law clearly requires that deliberations leading up to decisions take place at public meetings, an attempt is sometimes made to distinguish between deliberations leading to official action and discussion sessions or briefings on municipal issues or concerns. For example, a municipal manager might in private brief members of the governing body about a drainage problem in the community. Some solicitors have held that such a briefing can be considered a conference and not violate the Sunshine Act. There is little support for this position in the Act itself, since the definition of conference definitely states they are to be training programs or seminars sponsored by state or federal agencies. Municipal officials certainly have a duty to be informed about problems in their community before they reach the point of actual official action. However, it is dangerous to try to justify briefing sessions or information gathering sessions as conferences and conduct them in closed meetings. Most of these issues will eventually resolve into official action of some sort. The concept of a meeting where members are simply informed and do not discuss issues ignores the basics of group dynamics. Members are all too likely to ask questions, pose possible responses by the municipal government and debate various courses of action. The court decisions cited above do not provide any support to the theory that so-called "informational sessions" are anywhere authorized as closed meetings by the Sunshine Law.

References

1. 65 P.S. 277(b); Sunshine Act, Section 7(b).
2. *Times Leader v. Dallas School District*, 49 D.&C.3d 329, C.P. Luzerne Co., 1988.
3. *Ackerman v. Upper Mt. Bethel Township*, 567 A.2d 1116, 130 Pa.Cmwlth. 254, 1989.

Public Notice

The Sunshine Law requires notice be given of all public meetings. Notice of regularly scheduled meetings must be given once a year by advertising in a newspaper of general circulation at least three days prior to the first meeting. The notice must give the place, date and time of the first meeting and a schedule of the agency's remaining regular meetings. Notice of the meeting also must be prominently posted at the principal office of the agency or at the public building where the meeting is to be held. In the case of local governments, this usually would be the municipal building. In addition, agencies must give notice by mail to the news media or interested citizens who have supplied stamped, self-addressed envelopes for this purpose prior to the meeting. There is no provision in the law requiring a public notice to cancel meetings. However, notice is highly recommended as a courtesy to citizens who may have intended to attend the meeting.

At a minimum, the notice must include the date, time and place of the meeting. The public notice is not required to contain a statement of the purpose of the meeting or a description of the business to be conducted at the meeting.¹ For special meetings, such as public hearings on land use matters or budgets, the purpose of the meeting is often included in the notice as a benefit to the public.

For rescheduled or special meetings, notice must be published in a newspaper of general circulation at least 24 hours in advance. Posting also is required. A special meeting is one scheduled after the establishment of an agency's regular schedule of meetings. For example, municipalities frequently hold special meetings to discuss or adopt a budget.

The Sunshine Law does not require public notice of an emergency meeting. However, these meetings must be open to the public. An emergency meeting is one held to deal with an emergency involving a clear and present danger to life and property. For example, a natural disaster, such as a flood or tornado, could result in an emergency meeting. A school district's action to adopt a redistricting plan was not an emergency posing a clear and present danger to life or property. However, the court excused the district's failure to advertise the meeting on the grounds no one was harmed by the lack of compliance.²

The Sunshine Law does not require that executive sessions be advertised or posted at the place of the meeting. Likewise, meetings that have been recessed and later reconvened do not have to be advertised in a newspaper. However, a notice of these meetings must be posted at the principal office of the agency or at the place the public meeting is to be held.

References

1. *Devich v. Borough of Braddock*, 602 A.2d 399, 144 Pa.Cmwlth., 578, 1992.
2. *In re Petition of the Board of Directors of the Hazleton Area School District*, 527 A.2d 1091, 107 Pa.Cmwlth. 110, 1987.

Public Participation

The Sunshine Act allows agencies to adopt rules and procedures for the conduct of public meetings. These rules are established by official action of the governing body. In the case of municipalities, rules are established by ordinance, resolution or regulation. The rules and regulations must be consistent with the intent of the Sunshine Act. Rules of procedure are within the control of the majority of the municipal governing body and may be changed at any time by a majority vote.

A 1993 amendment to the Sunshine Act requires the boards or councils of political subdivisions and authorities created by political subdivisions to provide a reasonable opportunity for public comments at each advertised regular and special meeting.¹ Comments are to be limited to matters of concern, official action or deliberation which are or may be before the governing body. If there is insufficient time at a meeting for residents and taxpayers to make comments, the board or council may defer the comment period to the next regular meeting or to a special meeting prior to the next regular meeting.

A governing body may still adopt reasonable rules for the comment period. Some municipalities require persons wishing to participate to be placed on the agenda prior to the meeting. A time limit may also be placed on an individual's presentation and any resulting discussion.

The amended law contains a clause stating that as long as the political subdivision or authority complies by holding a public comment period, their action on an issue cannot be overturned solely on the basis of lack of public comment on that action. In addition, the revised law contains language granting any person the right to object at any time during a public meeting to a perceived violation of the Sunshine Act.

The Sunshine Act applies to all citizens, including nonresidents of a municipality. Meetings must be open to the general public and information made available to anyone in attendance. However, public comments may be limited to residents or taxpayers of the municipality or authority.

This new guarantee appears to apply only to the governing board or council of the political subdivision or authority. It does not explicitly apply to other bodies considered as “agencies” under the Sunshine Act, such as appointed municipal boards or commissions or committees of the governing body.”

Reference

1. 65 P.S. 280.1; Sunshine Act, Section 10.1.

Recording Devices

The Sunshine Act allows persons attending public meetings to record the proceedings with recording devices. This right extends to the use of videotaping equipment.¹ Public agencies are permitted to adopt reasonable rules governing the use of recording devices.

Persons who attend and verbally participate in public meetings must expect to have their statements recorded.² Since zoning hearing board hearings are public meetings under the terms of the Sunshine Act, any citizen has a right to tape record the session. Individuals speaking at the hearing must expect to have their statements recorded. They can have no expectation of privacy which would afford them protection under the Federal Wire Tap Act.

References

1. *Hain v. Board of School Directors of Reading School District*, 641 A.2d 661, 163 Pa.Cmwlth. 479, 1994.
2. *Harman v. Wetzel*, 766 F.Supp. 271, E.D. Pa., 1991.

Minutes

Under the Sunshine Act, the vote of each agency member must be publicly cast and all roll call votes recorded. Members of municipal governing bodies may not vote by secret ballot. Commonwealth Court ruled a school board violated the Sunshine Act when it voted to fill a vacancy on the board by secretly marking paper ballots.¹ In order for a vote to be publicly cast, a vote must be one that informs the public of an elected official's position on a particular matter of business. The school board's vote to fill a vacancy was an action requiring a public

vote for purposes of the Sunshine Act. The Sunshine Act also requires written minutes be kept of all public meetings. This requirement extends to all committees of municipal governing bodies that qualify as agencies under the Act. The minutes must include the following.

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 of roll call votes.
4. The names of all citizens who appeared officially at the meeting and the subject of their testimony.

In a court case involving alleged sex discrimination by a fire company, Commonwealth Court ruled the Pennsylvania Human Relations Commission was not required to provide proof that each commissioner reviewed the entire report or that a majority of commissioners voted in favor of the decision.² The Commission's order was signed by the chair and attested by the secretary, showed no dissent and indicated the Commission unanimously supported the decision. The Sunshine Act requires the Commission to keep a record of its official actions, but the objecting party bears the burden to prove lack of compliance.

References

1. *Public Opinion v. Chambersburg Area School District*, 654 A.2d 284, Pa.Cmwlth., 1995.
2. *George Clay Steam Fire Engine and Hose Co. v. Pennsylvania Human Relations Commission*, 639 A.2d 893, Pa.Cmwlth., 1994.

Confidentiality

The Sunshine Act contains a provision which excludes from the scope of the statute certain confidential or privileged deliberations or actions, including investigations of possible violations of the law.¹ A district attorney's office was investigating a borough police chief for failure to issue citations for driving under the influence. A court ruled the borough was not required under the Sunshine Act to vote and adopt charges against the chief at an open meeting because the matter was then under investigation by the district attorney. The charges were ruled outside the scope of the Sunshine Act.²

The Public School Code authorizes professional employees subject to disciplinary proceedings to request a closed hearing.³ Such a request by a teacher protected the facts forming the basis for suspension from disclosure under the Sunshine Act.⁴

References

1. 65 P.S. 286; Sunshine Act, Section 16.
2. *In re Blystone*, 600 A.2d 672, 144 Pa.Cmwlth. 27, 1991, appeal denied 626 A.2d 1159.
3. 24 P.S. 11-1126; Public School Code, Section 1126.
4. *Mirror Printing Company, Inc. v. Altoona Area School District*, 609 A.2d 917, 148 Pa.Cmwlth. 168, 1992.

Violations

No state administrative agency has been given jurisdiction in legal challenges under the Sunshine Act. Rather, the Sunshine Act gives county courts of common pleas original jurisdiction in legal challenges involving local governments. Commonwealth Court has jurisdiction in cases involving state agencies. Courts have the discretion to invalidate official actions taken at meetings violating the Sunshine Act. Courts may enforce the law through injunctions or other appropriate remedies. This means that any citizen aggrieved by an alleged violation of the Sunshine Act does not have administrative recourse, as is the case under the State Ethics Act. Challenges to the actions of agencies under the Sunshine Act can only be brought in the courts.

The Sunshine Act grants standing to sue to any person and places venue either where the agency is located or where the act occurred. Under Pennsylvania law, corporations are included within the meaning of persons. A corporate newspaper was found to have standing to bring an action against a school district for alleged violations of the Sunshine Act. The school district had declined to divulge how the school directors had voted in secret ballot to fill a vacancy on the school board. The court ruled the newspaper had standing to sue based on the plain language in the Sunshine Act allowing any person to bring action. Moreover, the court held the newspaper had standing based on the role of the press in our society. The press's interest is different from that of the average citizen because the news media has the responsibility for informing the public.¹

Even though a violation of the Sunshine Law occurs, it remains at the discretion of a court whether or not to invalidate official actions or deliberations taken at the meeting; there is no automatic invalidation. In each case, the courts have looked at the effect of the violation on the entire decision-making process.

In one case, a court found a violation of the Sunshine Act took place when two township supervisors discussed a proposed zoning ordinance at a closed meeting. However, the closed meeting produced no votes or decisions. Later that same evening, the supervisors held a public meeting on the same issue. The board took official action approving the zoning amendment at the open meeting after extensive public discussion of the issues by citizens, the supervisors and the developer. The court found no evidence the official action at this public meeting was a mere rubber stamp approval. An appellate court ruled the trial court had not abused its discretion in refusing to set aside the zoning amendment.² The court also found that where no action was taken at the closed meeting and the only official action was taken at a succeeding public meeting, there is no legislative authority for the courts to invalidate the action taken at the public meeting.³

In other instances, the entire decision-making process has been examined to determine the damage caused by the action taken at a closed meeting. Where the action taken at a closed meeting followed extensive public meetings and a widespread discussion of the issues, and where setting aside the decision would cause significant delays in instituting a reorganization plan, generate uncertainty among students and faculty and add costs for the taxpayers, the court upheld the action of the trial court in exercising its discretion not to invalidate the reorganization plan.⁴

Sunshine Act violations can be cured by subsequent ratification at public meetings, otherwise governmental action in a particular area would be gridlocked. In one case, a decision to close the county home taken at a closed meeting was subsequently ratified by a resolution adopted by the board of county commissioners at the next regularly scheduled public meeting.⁵ In a similar case, a planning commission was found to violate the Sunshine Act by holding a closed meeting to consider a recommendation on amending the township junkyard ordinance.⁶ However, the situation was cured when the planning commission held a subsequent open meeting where citizens were allowed to voice their opinions on the recommendation.

Where a school board conducted an illegal written ballot to fill a vacancy on the board, a second publicly-cast vote was found to cure the action.⁷ In another case where a decision was made at a closed meeting and the agency failed to return to open meeting to vote on accepting a legal settlement, the court exercised its discretion not to invalidate the action on the grounds that the affected party did not claim injury because of the violation. Justice would not be served by setting aside the settlement on this basis.⁸ A township board of supervisors decided in an executive session to appeal a decision by the township zoning hearing board. The township failed to adopt or ratify this action at a subsequent public meeting. A county court ruled this failure constituted a violation of the Sunshine Act and invalidated the township's decision to file an appeal.⁹ Where a school board agreed in an executive session to increase the superintendent's salary, it failed to vote on it in a public meeting, the action was set aside by the court.¹⁰

Legal challenges under the Sunshine Act must be filed within 30 days from the date of an open meeting. If the meeting was not open, the challenge must occur within 30 days from the discovery of the meeting. No legal challenge may commence more than one year from the date of the meeting in question. The 30-day rule for

filing legal challenges has been upheld in court rulings.¹¹ Courts may impose attorney fees for legal challenges initiated in bad faith.

The Sunshine Act does not specify the nature of a legal challenge occurring under the statute. The Commonwealth Court has ruled the manner in which the challenge is commenced, whether by complaint, writ, agreement, or other means, is of no particular significance. A writ of summons was found to be a valid challenge under the Sunshine Act.¹²

Violation of the Sunshine Act is deemed a summary offense. Public officials found guilty of violating the law may be sentenced to a fine of up to \$100 plus costs of prosecution. Summary offense proceedings may be heard before a district justice.¹³ A county court ruled that the jurisdiction of courts of common pleas in cases involving local agency violations of the Sunshine Act is not exclusive. Rather, it is concurrent with the jurisdiction of district justices to hear summary offenses.¹⁴

References

1. *Press Enterprise v. Benton Area School District*, 604 A.2d 1221, Pa.Cmwlt., 1992.
2. *Ackerman v. Upper Mt. Bethel Township*, 567 A.2d 1116, 130 Pa.Cmwlt. 254, 1989.
3. *Ackerman*, supra; *Devich v. Borough of Braddock*, Allegheny County Court of Common Pleas, No. 90-01251, Civil Division, 1990; *Frazer Concerned Citizens v. Frazer Township*, 140 P.L.J. 342, 1992.
4. *Bradford Area Education Association v. Bradford Area School District*, 572 A.2d 1314, 132 Pa.Cmwlt. 385, 1990.
5. *Lawrence County v. Brenner*, 582 A.2d 79, 135 Pa.Cmwlt. 619, 1990, appeal denied 593 A.2d 426, 527 Pa. 652.
6. *Moore v. Township of Raccoon*, 625 A.2d 737, 155 Pa.Cmwlt. 529, 1993.
7. *Public Opinion v. Chambersburg Area School District*, 654 A.2d 284, Pa.Cmwlt., 1995.
8. *Keenheel v. Commonwealth, Pennsylvania Securities Commission*, 579 A.2d 1358, 134 Pa.Cmwlt. 494, 1990.
9. *Heidelberg Township v. Heidelberg Township Zoning Hearing Board*, 106 York 26, 1992.
10. *Preston v. Saucon Valley School District*, 666 A.2d 1120, Pa.Cmwlt., 1995.
11. *Tom Mistick and Sons, Inc., v. City of Pittsburgh*, 567 A.2d 1107, 130 Pa.Cmwlt. 234, 1989; *Bradford*, supra; *Hain v. Board of School Directors of Reading School District*, 641 A.2d 661, 163 Pa.Cmwlt. 479, 1994.
12. *Tom Mistick*, supra.
13. 42 Pa.C.S. 1515(a)(1).
14. In re: Private Criminal Complaint of Ivan Nusic, Northampton County Court of Common Pleas, No. 313-1990.

II. Open Records: The Right to Know Law

The Right to Know Law was originally enacted in 1957. Act 100 of 2002 substantially amended the law, expanding definitions and addressing the handling and treatment of paper, electronic and other mediums of documents. It guarantees citizen access to certain defined public records of governmental agencies. Along with the Sunshine Act, it forms the legal basis for citizen access to knowledge about the activities of governmental agencies.

Open Records

Right to Inspect. Any citizen of Pennsylvania has the right to examine and inspect any public record of a public agency under authority of the Right to Know Law.¹ This includes the right, under certain conditions, to make extracts, copies, photographs or photostats under supervision of the custodian of the records. The law also provides for denial of access to public records, redaction of certain information, and response to requests for access. Processes for appeals, court costs, attorney fees, penalties and immunity are also provided in the law.

The Right to Know Law includes among the public records open to examination accounts, vouchers or contracts documenting the receipt or disbursement of money, or purchase, lease or sale of services or supplies, and any minute, order or decision affecting the personal or property rights, duties or obligations of any group. Public officials are not required to allow public inspection of reports or communications disclosing the progress of official investigations, of any document where public access is prohibited by law or court order, of any document that would operate to impair a person's reputation or personal security, or of any document that would result in the loss of federal funds. To qualify as a public record, the document must be either an "account, voucher or contract" or a "minute, order or decision." The Commonwealth Court has established a four-part test that the person seeking information claimed to be a minute, order or decision must meet to establish that the requested material is a public record.²

1. The material is generated by an agency covered by the Act.
2. The material is a minute, order or decision of an agency or an essential component in the agency arriving at its decision.
3. The material fixes the personal or property rights or duties of any person or group of persons.
4. The material is not protected by statute, order or decree of court.

A similar test for judging whether material qualifies as an account, voucher or contract has not yet been formulated by the courts.

Redaction. An agency may determine that a public record contains information which is subject to access as well as information which is not subject to access. If information is not subject to access and is an integral part of the record and cannot be separated, an agency may redact that information which is not subject to access, and must grant access to that information which is subject to access. An agency may not deny access to the public record if the information which is subject to access is able to be redacted. Any information which an agency redacts is considered a denial under provisions of the act.

Denial. Specific information about how redaction is to be accomplished by an agency is not provided in the act. Since redaction is considered a denial, any redaction of information by an agency or any denial of access, whether in whole or in part, an agency shall provide a written response that must include:

1. A description of the record requested.
2. Specific reason(s) for the denial, including citation of supporting legal authority.
3. Reason(s) for agency determination that a record is not a public record.
4. Name, address, title, business address, business telephone number and signature of the public official or public employee on whose authority the denial is issued.
5. Date of the response.
6. Procedure for appeal(s) of denial of access as defined by the act.

Any Citizen. The Right to Know Law marked a departure from the previous common law right of access to public records. The right to access has been expanded from a citizen with a defined interest in a matter involving the record to any citizen of the Commonwealth regardless of their degree of interest.³ This principle was established in the first appellate court decision involving the statute in 1958. The court broadly interpreted the law to mean “any citizen” regardless of their interest had a right to inspect public records and not just those with a personal or property interest in the records.⁴

The broad interpretation of who has access to public records under the Act has been followed in later cases. An attorney who is a citizen of Pennsylvania is entitled to seek disclosure of documents even though he represents a client who is not a citizen of Pennsylvania.⁵

But where an attorney’s name was on a request for documents made in the name of a New York corporation, the court refused to grant the request because it was the corporation which sought to compel disclosure.⁶ The right of access to public records is not dependent upon the motive of the persons seeking access. The right of access to a list of candidates for a Certified Public Accountant examination was upheld even though the individuals seeking access were conducting preparatory courses for the exam and could conceivably gain financially from the list of names.⁷ The courts granted a photographer access to a list of graduating high school seniors despite the fact he intended to use the information to foster his business.⁸ When access to a list of uncashed checks was sought, the court held that even when a commercial “tracer” might use the list to generate “exorbitant” fees, the motive of the citizen seeking public information is not relevant to granting access to the records.⁹ This is true even where the person seeking the information might combine material that is intrinsically harmless by itself with other available information to produce results that may be damaging to individual reputations.¹⁰ A citizen may not be denied access to public records because of a lack of perceived personal interest or for a lack of a “legitimate” purpose.¹¹

Extent of Right. The Right to Know Law applies to all municipalities in the state, including home rule municipalities.¹² Courts have found that the right of inspection of public records is a substantive matter of statewide concern. Access to records under the Right to Know Law overrides more restrictive limitations found in any home rule charter.

The Right to Know Law applies only to inspection of public documents. It does not give citizens the right to interrupt business meetings of public agencies at any time they desire to make remarks.¹³ Neither the Right to Know Law nor the guarantee of freedom of speech go so far as to allow citizens to interfere with the orderly processes of government.

References

1. 65 P.S. 66.2; 1957 P.L. 390, Section 2.
2. *Nittany Printing and Publishing Co., Inc. v. Centre County Board of Commissioners*, 627 A.2d 301, Pa.Cmwth., 1993; *Frommer v. Department of Labor & Industry*, 667 A.2d 35, Pa.Cmwth., 1995; *Pennsylvania Coal Association v. Environmental Hearing Board*, 654 A.2d 122, Pa.Cmwth., 1995.
3. *Breinig v. Meyers*, 523 A.2d 1211, 105 Pa.Cmwth. 250, 1987, appeal denied 536 A.2d 1334, 517 Pa. 610.

4. *Wiley v. Woods*, 141 A.2d 844, 393 Pa. 341, 1958.
5. *Ryan v. Commonwealth, Pennsylvania Higher Education Assistance Agency*, 448 A.2d 669, 68 Pa.Cmwlth. 123, 1982.
6. *Statewide Building Maintenance, Inc. v. Pennsylvania Convention Center Authority*, 635 A.2d 691, 160 Pa.Cmwlth. 544, 1993.
7. *Freidman v. Fumo*, 309 A.2d 75, 9 Pa.Cmwlth. 609, 1973.
8. *MacKnight v. Beaver Area School District*, 30 D.&C.3d 463, C.P. Beaver Co., 1982.
9. *Anders v. Commonwealth, Department of Treasury*, 585 A.2d 568, 137 Pa.Cmwlth. 111, 1991.
10. *Moak v. Philadelphia Newspapers, Inc.*, 336 A.2d 920, 18 Pa.Cmwlth. 599, 1975.
11. *Gutman v. Pennsylvania State Police*, 612 A.2d 553, 148 Pa.Cmwlth. 567, 1992, appeal denied 621 A.2d 583, 533 Pa. 638; *Envirotest Partners v. Department of Transportation*, 664 A. 2d 208, Pa.Cmwlth., 1995.
12. Moak, *supra*.
13. *School District of Pittsburgh v. Concerned Citizens*, 117 P.L.J. 285, 1969.

Responsibilities of Agencies

Opening Records. The Right to Know Law requires that public records be open for examination and inspection at reasonable times.¹ Where a township restricted access to minute books to the regular monthly meetings of the board of supervisors, the court ruled that this was an unreasonable qualification and limitation on the rights of citizens.² The township was ordered to make information available at less restrictive times. The court held that the board of supervisors, and not the township secretary, had the responsibility for affording citizens the right to inspect and copy records.

A county assessment office was found to have overly restrictive procedures in denying a citizen the right to look at original property record cards, and instead requiring purchase of a copy for one dollar. In spite of the county's claims that inspection of the original cards resulted in many missing records, the court and the law mandates access to records by means of examination and inspection.³

The agreement between the state Department of General Services and the Pennsylvania League of Cities and Municipalities for administration of a cooperative purchasing program was challenged on the basis that a subscription fee requirement created an impediment to free access to public records under the Right to Know Law. The court upheld the agreement, finding it did not have the effect of precluding the Department from responding to requests from citizens.⁴

In a case where the minutes of the township planning commission sought by the citizen were lost and could not be located by the township, the court ruled there was no right under the law to demand reproduction of lost records.⁵ There was no evidence to indicate the loss of the records was due to any impropriety or culpability on the part of the township planning commission. The unavailability of the lost records did not constitute a denial to examine public documents without just and proper cause.

A municipality can be compelled to produce records which are not physically in their possession, but under their control.⁶ When a newspaper sought canceled checks on the township's payroll and road accounts, the court ruled they were public records. Even though the township did not have possession of the canceled checks, it was ordered to authorize its bank to make the checks available to the reporter.

Requests for Records. The definition of "requester" is a person who is a resident of the Commonwealth and requests a record pursuant to the act. Repealed from the definition is the phrase "or does business in," meaning business owners who are non-residents are not considered "requesters" and could conceivably be denied access to public records. There are several additions to the act regarding requests for records that are notable.

1. A request for a public record may be verbal or written but an agency may require a request to be in writing.
2. Anonymous requests for access to records may be made.
3. An agency must respond to a request within five working days.

4. If a requester chooses to pursue relief and remedies provided in the act, it must be initiated by a written request.
5. A written request for access to records may be submitted in person, by mail, facsimile, electronically, or by other means by agency rules.
6. Any written request must be addressed to the agency head or other person designated by rules of the agency.
7. A written request must clearly identify any records sought and must include the name and address to which the agency can respond.
8. No explanation or reason for a request of records is required.

Response to Written Requests. The Right to Know Law has a specific section that identifies acceptable forms of written requests for information. All non-Commonwealth agencies (local governments) receiving a written request for information shall:

1. Make a good faith effort to determine if the record requested is a public record.
2. Respond as promptly as possible under the circumstances existing at the time of the request.
3. Not exceed five business days to respond to a written request.
4. Deem a request denied if no response from the non-Commonwealth agency is provided within five business days.

Electronic Access. The use of computers and the Internet as business tools has provided local governments with many advantages in records management and storage. Additionally, increased access to records, forms and other information has provided governments with new opportunities for efficient methods of communications with their constituents and other interested parties.

With these technologies, however, comes an increased responsibility with respect to public access to records and how those records can be provided to the public or a requester. The act addresses electronic records and does not treat them differently from more traditional kinds of records. If access to a public record is available only by electronic means, a municipality, upon request, must provide access to inspect the public record at an office of the agency.

If a public record is only maintained electronically or exists in any other nonpaper media, an agency is required to duplicate the record(s) and provide it on paper when responding to a request for records under the act.

Duplication of Records. The Right to Know Law gives citizens the right to make copies of public records. However, public agencies may adopt policies and enforce reasonable rules governing the making of these copies.⁷ Where a municipality has failed to exercise its right to make rules and regulations on the copying of records, it cannot make ad hoc and possible variable determinations on a case by case basis. In a case involving Philadelphia Police Department accident reports, the citizen was given the right to make mechanical copies of the reports.⁸

The public agency is not required to provide copies to citizens requesting information. Where a township supervisor requested the right to inspect and copy financial documents of a school district, the court ruled the records were clearly public in nature. However, the school district was not required to furnish 600 copies of the requested documents even if the citizen agreed to pay for the copies.⁹ Agencies are not required to have their personnel work for others making copies. The decision of whether or not to make photocopies and provide them is left to the agency. In this case, the school district was required to permit the citizen to make copies on his own machine.

Public agencies may establish reasonable fees for making copies of records when a photocopy machine is available. Fees are usually set on a per page basis. Some agencies have also established research fees where a request to review records involves extensive work on the part of employees to locate and retrieve old records.

Assembling Records. While the Right to Know Law mandates that public agencies provide citizens with access to records deemed public, this does not mean that agencies are required to assemble, prepare or produce records in a particular manner just for citizens seeking information under the statute. Numerous court decisions have firmly established this policy.

In a case involving the Department of State, the court ordered the Commonwealth to make available for examination and inspection records of candidates taking the examination for Certified Public Accountant. However, the department was not required to prepare and furnish lists or other excerpts of its records.¹⁰

In a similar decision, the court ordered the State Employees Retirement Board to make available for inspection the files of retirees to allow the association representing the retired employees to obtain their addresses. However, the court found no duty on the part of the state board to furnish a list or place their records in such a fashion as to facilitate solely the “right to know” statute. In addition, if it became necessary to remove confidential information from the files, this was to be done by the state agency, at the expense of the association seeking the information.¹¹

In a decision involving the Pennsylvania Game Commission, the court ordered the Commission to permit a citizen to make copies of the list of names and addresses of subscribers to the Pennsylvania Game News. However, the court ruled the citizen had no right to demand the Commission develop for his convenience copies of addressograph labels as sought. The court, citing the statutory language, found the Game Commission had the discretion to determine the method by which the information could best be transmitted to the citizen.¹²

In a final case involving a state agency, the Department of General Services was ordered to make available a list of those responding to a request for proposals to lease office space to the state. However, the court ruled the department could not be compelled to develop a list which did not exist. The department was only required to afford the petitioner access to materials from which the petitioner could compile a list of names.¹³

A county court ordered an elected township finance officer/tax collector to allow a citizen who was seeking information on the unreimbursed expenses of the office to inspect and copy bills, invoices, payroll records and other operational accounts of her offices.¹⁴ However, the finance officer/tax collector was not required to explain the meaning of the records or supply any compilations or totals.

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Agency Definition

The Right to Know Law governs citizen access to records of public agencies. The law defines “agency” as any office, department, board or commission of the executive branch of the Commonwealth, the Pennsylvania Turnpike Commission, the State System of Higher Education or any municipal authority or similar organization created by statute that performs or has for its purpose the performance of an essential governmental function. Political subdivisions include counties, cities, boroughs, incorporated towns, townships and school districts.¹ Counties, municipalities and municipal authorities are clearly covered by the Law.

Act 100 expands and further provides for definitions of “Commonwealth agency” by referring to definitions provided in the state procurement law. These definitions are referenced in Act 100 as being part of 62 Pa.C.S. § 103. For the purpose of clarification, these definitions from the procurement law are provided in their entirety.

“Commonwealth agency.” An executive agency, an independent agency or a State-affiliated entity.

“Executive agency.” The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any independent agency or State-affiliated entity.

“Independent agency.” Boards, commissions and other agencies and officers of the Commonwealth which are not subject to the policy supervision and control of the Governor. The term does not include any State-affiliated entity, any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any State-related institution, political subdivision or any local, regional or metropolitan transportation authority.

“State-affiliated entity.” A Commonwealth authority or a Commonwealth entity. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any State-related institution, political subdivision or any local or metropolitan transportation authority.

Any non-Commonwealth agency is meant to include all local government entities including counties, cities, towns, boroughs and townships and their appointed boards and commissions.

Court rulings have helped to define the meaning of an “agency” under the Right to Know Law. In one case, a court determined the governor was included within the meaning of the executive branch and subject to the Right to Know Law.² In another decision, a court ruled the Pennsylvania Housing Finance Agency was an agency subject to the Right to Know Law even though it was not specifically mentioned in the definition of an agency in the statute.³ The Pennsylvania Housing Financing Agency was determined to be performing an essential governmental function and is now included in the definitions of the Act as a state-affiliated entity.

A board of county commissioners ordinarily would be an agency under the Right to Know Law. However, one member of a three-member board was not an agency under the Law. Where only one member of a board used a solicitor's opinion to reach a decision, the document was not considered a public record.⁴

A private nonprofit development corporation was held to be an agency under the Right to Know Law.⁵ The court said that for the purposes of the Law, an agency was what the legislature defined as an agency. The legislature had enacted a law making the nonprofit corporation which leased rental property to the state subject to the Right to Know Law.

A distinction for coverage under the Right to Know Law has been made between state-related universities on one hand and public schools, community colleges and state-owned educational institutions on the other. The latter have been deemed agencies subject to the statute.⁶ Courts have ruled school districts are public agencies under the Right to Know Law.⁷ Also, community colleges are public institutions created by and financed by public bodies and public funds.⁸ Community colleges perform an essential governmental function and the trustees are appointed by elected officials.

A different result has been reached in two cases involving state-related universities. A court ruled the Pennsylvania State University was a state-related institution as distinguished from a state-owned institution and was not an “agency” of the Commonwealth under the Right to Know Act, even though the university received financial support from the Commonwealth. Therefore, the university was not required to provide students with salary information on administrative officers at Penn State.⁹ Courts also ruled Temple University was a state-related institution but not a state agency subject to the Right to Know Act. The ruling pointed out Temple was a privately governed university with only 12 of 36 trustees appointed by the Commonwealth and that public support did not comprise the total budget of the university. Thus, the university was not required to disclose detailed financial information, an itemized budget and minutes of meetings of the board to trustees to students and faculty.¹⁰

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Financial Records

The Right to Know Law defines “public record” to include any account, voucher or contract dealing with the receipt or disbursement of funds, or the acquisition, use or disposal of services or supplies, and any minute, order or decision affecting the personal or property rights, duties or obligations of any person or group.¹ A sizable portion of the litigation under the Right to Know Law involves financial records.

Accounts. In a case involving a township, a newspaper reporter sought canceled checks on the township's road and payroll accounts. The court determined the canceled checks constituted accounts dealing with the disbursement of funds and were public records.² The court defined an account as a record of business dealing between parties and a canceled check constitutes a form of a record. Even though the township did not have possession of the canceled checks, it was ordered to authorize the bank to make the checks available to the reporter. A list of unclaimed checks held by the state Treasury Department was held to be an account and thus a matter of public record.³

In another court decision involving the Commonwealth, a court determined escheat records of abandoned and unclaimed property held by the Department of Revenue were public records under the Right to Know Law.⁴ Escheat records are based on accounts of receipts and disbursements of the Department of Revenue. They also relate to orders fixing the rights of citizens.

In a final case involving the Commonwealth, the court ruled medical assistance settlement and activity reports generated by the Department of Public Welfare were public records.⁵ These reports present a statement of transactions during a fiscal period resulting in a balance due or payable to service providers and were found to be accounts for purposes of the Right to Know Law.

The City of Philadelphia filed a petition for a declaratory judgment seeking declaration it be entitled to disclose a list of delinquent real estate taxpayers. A court ruled the Right to Know Act, which affords relief to a citizen denied access to records, would not form the basis of an order granting public disclosure where the city, as keeper of the records, initiated the legal action. However, the court granted the city's petition declaring public the records of delinquent taxpayers based on the Home Rule Charter rather than the Right to Know Act.⁶

A county court ruled accounts containing information on the unreimbursed expenses of an elected finance officer/tax collector in a home rule township were public records under the Right to Know Law. These included bills, invoices, payroll records and other operational accounts of her offices.⁷ Commonwealth Court ruled itemized cellular telephone bills paid by the county were public records with the meaning of the Right to Know Law.⁸ The bills clearly were accounts or vouchers evidencing a contract and deal with the use of county equipment. The purpose of the Right to Know Law is to allow citizens to scrutinize the acts of public officials and to make officials accountable in their use of public funds. The court said that if public money is spent, the public has a right to know where it goes.

Contracts. A real estate developer, who submitted an unsuccessful proposal to the state for lease of office space, sought access to information on the contract award from the Department of General Services. This case resulted in a partial victory for each side. A court ruled the list of those responding to the request for proposals to lease office space was a public record within the meaning of the Right to Know Act. However, since the developer failed to show this information formed the basis for a decision by the Department of General Services, the court ruled correspondence and memoranda related to the request for proposals did not constitute a public record.⁹

A contract between a successful bidder and the state Department of Transportation to perform emissions inspections was a public record under the Right to Know Law. The contract dealt with the use or disposal of services, supplies, material and equipment. The contract also dealt with the receipt of funds, since the contractor might have to pay damages, fines and penalties to the Commonwealth.

The Right to Know Act figured in a wrongful death suit in which the plaintiff's family was killed in a demolition accident. The city had hired the demolition contractor on an emergency basis outside the normal bidding process. The court ruled the plaintiff was entitled to inspect all city documents, including memos, letters, reports, telephone messages and handwritten notes, related to the contract.¹¹

A newspaper sought disclosure of an out-of-court settlement agreement between a township and a citizen. The citizen had filed suit claiming his rights were violated by township police. The township was required to pay a \$5,000 deductible to its insurance carrier to cover a portion of the settlement. The court determined the settlement agreement was a contract requiring disbursement of public funds and therefore was a public record subject to inspection and copying.¹²

Grants. Another case involved documents forming part of a grant application. A construction company sought a housing market survey submitted to the Pennsylvania Housing Finance Agency by a real estate company seeking funding from the state. The court ruled the survey was not a public record subject to disclosure under the statute because the state agency had not disposed of the application for funding.¹³ The market survey was part of a pending proposal. The court distinguished this situation from other cases where documents sought were gatherings of statistics by the agency itself. A grant applicant is not entitled to elements of another party's incipient proposal or application.

Budgets. The line-item budget worksheet supporting figures on the official state budget forms for a municipality is a public record under the Right to Know Law.¹⁴ This means municipal line-item budgets have to be opened to public inspection.

In a case pertaining to the Commonwealth's budget, a court ruled departmental budget reports prepared for the budget secretary were not public records under the statute. The court concluded general listings of revenue and expenditures set forth in the budget reports were neither accounts, nor vouchers nor contracts. Under the law, according to the court, those accounts available for disclosure are records of debit and credit entries covering transactions and not a statement of facts or events.¹⁵

Real Estate Tax Assessments. A group of citizens sought access to the building record side of property cards maintained by a county assessment office. The cards contained information on construction specifications and computations related to the properties. The court ruled the information constituted public records under the Right to Know Law, since such records reflected factual determinations by the board directly affecting the valuation of the buildings for tax assessment purposes.¹⁶ The action of the assessment office is a decision fixing personal and property rights. The court reached the same conclusion when a professional title searcher requested to see the property record card for a client's property.¹⁷ The county policy requiring a person wishing to access assessment records to fill out a request form and to purchase a copy of the records was a violation of the Right to Know Law.

Property Acquisition. A newspaper appealed to the courts after a city denied its request for real estate appraisals performed in connection with the city's efforts to acquire properties to construct a recycling center. The court ruled the real estate appraisals were public records under the Right to Know Law and did not fall within the investigative exception in the statute. However, the court ruling covered only those properties the city had already acquired. It did not cover properties under negotiation because disclosure of this information could prejudice the city in its negotiations with owners.¹⁸

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Personnel Records

Litigation involving personnel issues constitutes another large quantity of case law surrounding the Right to Know Law. Many of the cases deal with the status of payroll records and personnel files as public records.

Payroll Records. In a Philadelphia case, a newspaper was granted access to police payroll records even though correlation of these records with a crime commission report might result in identification of officers accused of corruption and misconduct. According to the court, where police payroll records themselves would not operate to prejudice or impair officers' reputations, they were not exempted from disclosure under the Right to Know Act.¹

Salary information of employees of public school systems, state-owned institutions of higher education and community colleges are public records, but those of private, state-related universities, Penn State, Pitt, Temple and Lincoln, are not public records.² A court held salary records of individual community college employees were public records since they are accounts dealing with the disbursement of public funds.³

A citizen sought to determine through the Right to Know Law if school employees had received pay for unexcused and unauthorized absences from work. The court ruled the citizen could have access to the attendance record cards of the employees notwithstanding the possibility the information could reveal disciplinary actions affecting the reputations or personal security of the employees.⁴ The court found that one of the necessary disadvantages of public employment is the requirement of public accountability. Production of the attendance record cards is necessary to determine if the district paid for unauthorized absences. This overrides any consideration of individual privacy or confidentiality.

When a newspaper requested employment records from a county housing authority, the authority voluntarily provided a list of employees' dates of employment and salary information. However, the authority refused to provide employees' social security numbers, home addresses and telephone numbers. Commonwealth Court held that social security numbers are excluded from disclosure under the Right to Know Law because their dissemination is restricted by federal law.⁵ In this case, because addresses and telephone numbers were listed with social security numbers, the court found the combination of data would jeopardize the personal security of the employees.

Personnel Files. A teacher and leader of a teachers' union filed suit against a school district for refusing to allow him to inspect his personnel file. The court ruled the file did not constitute a minute, order or decision of the board of school directors and did not fix any rights, privileges, immunities, duties or obligations of the teacher and was not a public record under the law.⁶ The court said the definition of a public record is in the present tense. It does not refer to speculations about possible future actions. A decision fixing personal rights is not the same thing as gathering information that may or may not be used in the future to fix rights.

A court ruled a member of the state police, who was terminated from his position, had a legal right to inspect the contents of his personnel file related to his removal from duty.⁷ The court stated a public record for purposes of the Right to Know Law includes decisions which establish, alter or deny rights, privileges, immunities, duties or obligations. The former officer clearly had a property right in his employment. The court carefully distinguished its decision from that reached in the West Shore case. Here the employee had been removed as a result of a "decision" fixing property rights in his employment. This action brought the contents of his personnel file relating to his removal under the Right to Know Law.

A lower court held a teacher's personnel file was not a public record of the school district.⁸ The minutes of a closed school board personnel committee meeting investigating the activities of the teacher were likewise not public records, since no action was taken against the teacher. But where a student had been expelled from school, the court ruled the student had a right to inspect and copy his own school records. However, the student was not entitled to inspect and copy the teaching record of the teacher with whom he had a controversy.⁹

Hiring, Promoting. Issues of hiring, promoting, disciplining and firing employees frequently involve challenges under the Right to Know Law. A township police officer, suspecting irregularities in the administration and grading of a promotional examination for sergeant, sought access to various documents under the Right to Know Law. The case resulted in a partial victory for each side. The court ruled the officer was entitled to a copy of the examination booklet, his own written examination and those of other applicants, his composite score and those of other applicants, and his own numerical score as well as the numerical scores of other applicants. However, the court determined he could not gain access to rating sheets completed by members of the civil service commission, evaluations by superiors specifically for promotional examinations and physicians' reports on the fitness of each applicant for promotion. These latter items were excluded from discovery because the information would operate to prejudice or impair the reputations of other applicants.¹⁰ Examination papers and records of the proceedings and official actions of civil service commissions are public records under the First Class Township Code.¹¹ The generic definition of public record in the Right to Know Law incorporates by implication those documents particularly established as public records in other statutes.

In another police-related case, the court ruled an unfavorable background investigation letter on an applicant seeking appointment to a borough police force was an exception to a public record under the Right to Know Law.¹² The applicant had sought the information as part of a defamation suit against his former employer, another municipal police department. The court held the letter was part of a background investigation by the civil service commission and fell under the investigation exemption. The court differentiated this type of letter from a letter of recommendation supplied by the applicant as part of the official application process. In this case, the commission initiated the background investigation.

Disciplinary Proceedings. In another case involving a police officer, individual taxpayers and a newspaper sought to compel a city to disclose the transcript of a closed hearing which resulted in the suspension of the police officer. A court ruled against disclosing the transcript on the basis the information consisted of official investigations and would operate to the prejudice of a person's reputation.¹³ Here the court ruled two provisions of the Third Class City Code, requiring all council meetings to be public and a journal of the proceedings to be open to the public,¹⁴ must be read together with the Right to Know Law. Exclusions established in the Right to Know Law are incorporated by implication in the Third Class City Code.

In a case involving a schoolteacher, disciplinary proceedings were settled by a legal agreement between the parties. A newspaper sought access to the agreement reached between the school board and the teacher involved in disciplinary proceedings. The court ruled the school board was not obligated under the Right to Know Law to disclose the contents of the agreement to the newspaper.¹⁵

Financial Disclosure Statements. Commonwealth Court ruled the House Minority Leader had no legal right to examine financial disclosure statements voluntarily submitted by various state officials in response to an executive order by the Governor. The court concluded the executive order was intended to be a communication between the Governor and his cabinet. The statements do not fix the duties of those asked to file since they are not legally enforceable. Voluntary communications do not fall under the Right to Know Law.¹⁶

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Criminal Justice Records

Public access to criminal justice records is governed by the Criminal History Record Information Act.¹ In general, public access is limited to the official criminal history record information, including identifiable descriptions, dates and notations of arrest, indictments, information or other formal criminal charges and any dispositions of those charges. Excluded are intelligence information, investigative information or treatment information, including medical and psychological information. Court dockets, police blotters (chronological listings of arrests) and press releases are established as public records. The Act does not contain a provision for recourse where access to public records are denied. The proper course of action for the denied party is an appeal under the Right to Know Law.²

Criminal history records kept by county clerks of courts are open to the public.³ Police blotters and incident reports which contain essentially the same information are public records under the Right to Know Law, but police investigative reports are not considered public records.⁴ Accident reports prepared by the Philadelphia Police Department were held to be public records under the Right to Know Act.⁵

A candidate for district attorney of a county sought disclosure of a computer printout providing information regarding cases assigned to a particular assistant district attorney, who happened to be the opposing candidate in the election campaign. The court ruled information contained in computer tapes comprising the county's history file was not a public record within the meaning of the Right to Know Act.⁶ Criminal justice agencies, including the district attorney's office, are required to maintain a criminal history record open to the public, but this does not extend to assignments of assistant district attorneys.

A person serving a life sentence in a state prison filed suit under the Right to Know Law after the Board of Pardons rejected his request for access to documents related to denial of his application for a commutation. A court ruled the files were not public records under the law, as they contained reports, investigations and recommendations from sentencing judges, prosecutors, and victims, and release of such data would operate to impair the personal security and reputations of persons mentioned in the reports.⁷ They were also not public records because decisions of the Board of Pardons do not affect personal or property rights. A convicted person has no right to be released before the expiration of the sentence.

A victim of a criminal assault investigated by city police requested access to the police case file. A court determined the documents were not public records subject to disclosure under the Right to Know Law.⁸ The fact that no active investigation of the crime had been conducted with respect to the file for 18 months prior to the victim's request did not remove the Right to Know Act exception precluding from disclosure records which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties. Police investigation and case files are not a public record, even if the investigation is not currently active. Likewise, when a newspaper sought disclosure of itemized cellular telephone bills of county officials, the district attorney and drug task force were directed to edit out records involving all criminal investigations, not just currently active investigations.⁹

An individual convicted of robbery sought various police department documents related to the crime under the Right to Know Law. These included the police desk book, day book and radio log book entries relating to the incident. A county court denied the convicted felon access to the police records citing the investigative excep-

tion found in the statute.¹⁰ The evidence upon which the petitioner had been convicted is already part of the public record to which the petitioner had access.

Police Regulations. A citizen sought access to State Police regulations, directives, and general and special orders. The court concluded the regulations and policy statements of the State Police were public records within the meaning of the Right to Know Law as decisions of the agency fixing the duties and obligations of the police force. The court ordered the State Police to grant access to regulations concerning responsibilities of its various bureaus and divisions and general rules on use of deadly force. However, the citizen was denied access to documents concerning sobriety and drug checkpoints and drug interdiction actions or documents concerning intelligence gathering regarding political activity, subversive activity and terrorism. The court held release of this information could lead to tip-offs and endanger police personnel.¹¹

Firearms Licenses. A newspaper sought information contained in applications for licenses to carry firearms issued by a county sheriff. The court applied a balancing test, weighing privacy interests and their possible invasion against the public benefit resulting from disclosure. The court determined home addresses, telephone and social security numbers were within the personal security exception of the Right to Know Law.¹² However, Commonwealth Court allowed access to the remaining information in the application, including licensees' name, race, reason for requesting the license, personal references and answers to background questions.

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Education Records

An interest group refused access by the Department of Education to documents pertaining to special education programs for exceptional children filed suit under the Right to Know Law. The court decision resulted in a partial victory for each side. The court ruled statistical data on the racial and ethnic composition of programs for exceptional children compiled by the Department of Education represented a decision by the department and constituted public records available to citizens. The statistical data will affect those children who are members of identifiable racial or ethnic groups. The information did not consist of an independent investigation so as to fall into the exception in the statute. However, special education plans, plan amendments and related documents submitted by schools to the Department of Education which were to be the subject of future decisions did not constitute public records under the Right to Know Law.¹ They were merely proposals awaiting a determination by the Department and will not become public records until a decision is made on approving the plans.

A group of parents of kindergarten pupils, upset over a proposed change in class schedules, sought access to the names and addresses of pupils under the Right to Know Law. The parents wanted the information to mobilize opposition to school district plans. Both county and appellate courts ruled the names and addresses of children were public records and subject to disclosure under the law.²

In a case with some similarity, a county court ordered a school district to disclose the address of a former pupil to the pupil's stepfather, who was supporting the child financially.³ The child's mother had removed the pupil from the school district without giving the stepfather information on the child's whereabouts. The court held that the Public School Code establishes that names and addresses of school children, including those withdrawn, are public records.

A student has the right to inspect school records concerning that student. But the personal reputation and security exemption keeps them from being released to anyone other than students or parents. Teaching records of teachers are not open to inspection by students.⁴

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2. *Young v. Armstrong School District*, 344 A.2d 738, 21 Pa.Cmwlth. 203, 1975; *Wiles v. Armstrong School District*, 66 D.&C.2d 499, C.P. Armstrong Co., 1974.
3. *McNight v. Wilson Area School District*, 59 D.&C.2d 497, C.P. Northampton Co., 1972.
4. *Condon v. Dallastown Area School District*, 67 D.&C.2d 200, C.P. York Co., 1974; 1973 Op.Atty.Gen. No. 20.

Health/Environmental Records

Patients at a state hospital petitioned the court under the Right to Know Act after the Department of Public Welfare refused to grant them access to an accreditation report on the institution. The court ruled the evaluation report was an essential component of the state agency's decision to approve the psychiatric hospital and affected the patients' rights to receive adequate health care and thus was a public record under the statute.¹ The report was found to be the basis for the Department's decision. It thus became a public record, even though it was not a determination of the agency itself. Under Department regulations, accreditation is a necessary prerequisite to the department's own approval of a facility for licensing.

In another health-related case, an individual seeking to stop the restart of the Three Mile Island nuclear generator sought survey data from the Department of Health involving the effects of the nuclear accident on pregnancy outcomes. A court ruled the surveys solicited from volunteers were outside the definition of public records in the Right to Know Act.² The court determined the person seeking the information was not a collaborating researcher and thus was not entitled to confidential information. Participants in the survey were assured of confidentiality because the raw data contained individual identifiable data.

An association representing the coal industry requested access to a draft adjudication submitted to the state Environmental Hearing Board by an outgoing board member assigned to hear the case. Commonwealth Court upheld denial of access to the draft, finding it was not an adjudication and cannot be equated with the final decision of the entire body.³

An attorney representing a competitor requested access to a contract between the state Department of Transportation and a private company hired to perform a centralized auto emission inspection program. The successful bidder claimed the documents were confidential and release of the information would violate trade secrets and impair its competitive advantage. The court ruled the contract was a public record for purposes of the Right to Know Law.⁴

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1. *Patients of Philadelphia State Hospital v. Commonwealth, Department of Public Welfare*, 417 A.2d 805, 53 Pa.Cmwlth. 126, 1980.
2. *Aamodt v. Commonwealth, Department of Health*, 502 A.2d 776, 94 Pa.Cmwlth. 54, 1986.
3. *Pennsylvania Coal Association v. Environmental Hearing Board*, 654 A.2d 122, Pa.Cmwlth., 1995.
4. *Envirotest Partners v. Department of Transportation*. 664 A.2d 208, Pa.Cmwlth., 1995.

Legal Opinions, Settlements

The public has a right to know the details of an out-of-court settlement involving a township. A township entered into a settlement agreement with a citizen who had sued, claiming police had violated his rights. The settlement agreement contained a nondisclosure clause, but the settlement was not approved by a court order. As part of the legal settlement, the township was obligated to pay a \$5,000 deductible not covered by its liability insurance policy. The township unsuccessfully argued that since the township paid the \$5,000 to the insurance carrier, the terms of the settlement did not constitute a public document. The court ruled paying the money to the insurance carrier did not change the fact that it was used to satisfy a township obligation. Because the township was obligated to disburse public funds, the settlement agreement was a public record subject to inspection and copying.¹

A newspaper sought access to a county solicitor's opinion regarding the legality of using drug forfeiture money to fund a full-time district attorney. One member of the three-member board of commissioners took the solicitor's opinion into account when arriving at a decision to oppose making the district attorney full-time. The other two commissioners both had arrived at their decisions before the solicitor's opinion was even requested. The court ruled a legal opinion is only advice and is not a prerequisite to an agency making a decision. The agency is not required to obtain a legal opinion or even follow it once obtained. Therefore, legal opinions are not an essential component of an agency's decision, and not a public record.²

A citizen appealed to the court after the Department of Environmental Resources denied her request to inspect a memorandum concerning approval of wastewater treatment plants. The court ruled the memorandum written by assistant attorneys general advising the Department of Environmental Resources was not a public record under the Right to Know Law.³ The court determined the memorandum was not a minute, order or decision by an agency fixing the personal property rights, privileges, immunities, duties or obligations of any person or group. Instead, the memorandum was a communication by lawyers employed by the Attorney General, and not by decision-makers within the Department of Environmental Resources. A document "fixing" matters of status must be one proximate to decision making. A communication from attorney advisors does not have the characteristics of a decision fixing the status of an individual.

An attorney who represents claimants in workers' compensation issues requested access to notice of compensation reports filed with the state Department of Labor and Industry. The department denied access due to confidentiality concerns. The attorney argued the records were, in essence, consent decrees recognizing an employer's/insurer's obligation to pay benefits. However, the Commonwealth Court ruled the filing of notice of compensation reports with the state was no more than a type of docketing procedure and did not rise to the level of sanctioning by a court as is done in a consent decree.⁴

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1. *The Morning Call v. Lower Saucon Township*, 627 A.2d 297, Pa.Cmwlt., 1993.
2. *Nittany Printing & Publishing Co., Inc. v. Centre County Board of Commissioners*, 627 A.2d 301, Pa.Cmwlt., 1993.
3. *Steele v. Commonwealth, Department of Environmental Resources*, 548 A.2d 1337, 120 Pa.Cmwlt. 510, 1988.
4. *Frommer v. Department of Labor & Industry*, 667 A. 2d 35, Pa.Cmwlt., 1995.

Name and Address Lists

Various lists of names and addresses in the possession of governmental agencies have been the subject of appeals under the Right to Know Law. In many cases, these lists have commercial value, and the motive of the citizen requesting the information became an issue before the courts early on. The Commonwealth Court held the Department of State had to make available for inspection records of candidates taking the examination for

Certified Public Accountant.¹ The individuals seeking the information were conducting preparatory courses for the exam and could conceivably gain financially from the list of names, but the court held the motive for seeking the information was not relevant.

When a group of parents of kindergarten pupils, upset over a proposed change in class schedules, sought access to the names and addresses of pupils, the court ruled they were public records and subject to disclosure under the Right to Know Law.² The parents wanted the information to mobilize opposition to school district plans. The court found the list of names and addresses was a public record because it formed the basis for various decisions of the school district. In another case involving lists of school students, the court decided the operator of a photography studio was entitled to the names and addresses of high school seniors despite the fact he planned to use the information to foster his photography business.³ Citizens have a right to examine public records regardless of the nature of their interest.

Records containing the names and addresses of retired state employees, requested by the association representing them, were held to be public records under the law.⁴ The court concluded the records were not intrinsically harmful and hence not encompassed by the personal security exception in the statute. Any confidential information in the files had to be removed at the expense of the association, prior to allowing access.

Similarly, a court ruled a subscriber mailing list for the Pennsylvania Game News published by the Pennsylvania Game Commission was a public record, even though the information was sought for commercial purposes. The subscription list was deemed an account identifying contracts between the Game Commission and its subscribers with respect to distribution of the magazine.⁵

When a newspaper sought information contained in applications for firearms licenses, Commonwealth Court granted only partial access.⁶ The newspaper was allowed to see and copy the name, race, reason for requesting the license, personal references and answers to background questions. However, access to home addresses, telephone and social security numbers was denied.

Where a newspaper sought employee records from a housing authority, the authority voluntarily provided a list of employees with salaries and employment date, but the Commonwealth Court upheld refusal to disclose social security numbers, home addresses and telephone numbers.⁷ The court determined dissemination of social security numbers was restricted by federal law, and that disclosure of social security numbers, combined with addresses and telephone numbers would jeopardize the security of authority employees.

In a case where a court denied access to a list of names and addresses, it ruled the Public Welfare Code prohibited a newspaper from obtaining the names, addresses and amounts received by welfare recipients in Philadelphia. The Public Welfare Code creates a statutory exception to the release of what normally would be public information. This list falls under the exception of documents made confidential by law. The court also expressed fear the newspaper would use the information for commercial and political purposes.⁸

The above ruling was used as a precedent in another case involving the Department of Public Welfare (DPW). Commonwealth Court ruled a committee of unemployed and underemployed workers could not have a list of names and addresses of welfare recipients against whom DPW had an unsatisfied recorded property lien.⁹ The court pointed out the committee had failed to submit a specific list of names of welfare recipients as required by law. In addition, the committee failed to establish the information would not be used for political purposes as required by a provision in the Public Welfare Code.

References

1. *Friedman v. Fumo*, 309 A.2d 75, 9 Pa.Cmwlt. 609, 1973.
2. *Young v. Armstrong School District*, 344 A.2d 738, 21 Pa.Cmwlt. 203, 1975.
3. *MacKnight v. Beaver Area School District*, 30 D.&C.3d 463, C.P. Beaver Co., 1982.
4. *Mergenthaler v. Commonwealth, State Employes' Retirement Board*, 372 A.2d 944, 33 Pa.Cmwlt. 237, 1977, confirmed 381 A.2d 1032.

5. *Hoffman v. Commonwealth, Pennsylvania Game Commission*, 455 A.2d 731, 71 Pa.Cmwlth. 99, 1983.
6. *Times Publishing Company, Inc. v. Michel*, 633 A.2d 1233, 159 Pa.Cmwlth. 398, 1993, appeal denied 645 A.2d 1321.
7. *Tribune Publishing Company v. Allegheny County Housing Authority*, 662 A. 2d 677, Pa.Cmwlth., 1995.
8. *McMullan v. Wohlgemuth*, 308 A.2d 888, 453 Pa. 147, 1973, appeal dismissed 94 S.Ct. 1547, 415 U.S. 970, 39 L.Ed.2d 863.
9. *Mon Valley Unemployed Committee v. Department of Public Welfare*, 618 A.2d 1227, 152 Pa.Cmwlth 324, 1992, appeal denied 629 A.2d 1385.

Exceptions

The law contains four exceptions to the definition of a public record. The first exception pertains to records involved in an investigation undertaken by an agency in the performance of its official duties; the second involves records to which access is unavailable due to statute or court decree; the third prohibits access to records which would operate to the prejudice or impairment of a person's reputation or personal security; the final exception prohibits access to records which would cause the loss of federal funds for the Commonwealth or any of its political subdivisions. If an agency can establish that the records sought by a citizen fall under one of these exceptions, it can prevent disclosure.

Investigations

In one of the earliest cases brought under the Right to Know Law, the court found that field investigation notes made by an employee of the city planning department for the purpose of making a report to a city council member fell under the investigation exception.¹ These were documents created by the agency in the course of its investigation.

Administrative Investigations. An insurance agent, who was the target of an investigation, sought access to his file held by the Department of Insurance. The court ruled the file on the licensee came within the investigative file exception to public access under the Right to Know Law, and thus the agent was not entitled to examine the file.² A prisoner serving a life sentence sought documents relating to denial of his application for a commutation by the Board of Pardons. The court ruled the reports, investigations and recommendations from judges, prosecutors and victims fell under the investigation exception.³ A revenue examiner for the City of Philadelphia was dismissed from his job after he disclosed confidential tax information to a newspaper reporter. The fired worker claimed the information was a public record under the Right to Know Law. However, the court disagreed and ruled the tax information came under the investigative exception included in the statute.⁴

Various types of documents have been held by courts not to fall under the investigation exception. These include a list of unclaimed uncashed checks held by the State Treasury,⁵ statistical data on the racial and ethnic composition of children placed in programs for exceptional children compiled by the Department of Education,⁶ and a hospital accreditation report submitted to the Department of Public Welfare by a nonprofit accrediting organization.⁷ When a newspaper sought real estate appraisals performed in connection with a city's purchase of real estate, the court ruled they were public records under the Right to Know Law and did not fall within the investigative exception in the statute.⁸ However, the court ruling covered only those properties the city had already acquired. The court found disclosure of information for properties still under negotiation could prejudice the city in its negotiations with owners.

Criminal Investigations. Except for records which form part of the criminal history record information, such as police blotters, police investigative reports are not considered public records under the investigation exception.⁹ Police investigative files are not public records, even where there has been no active investigation of a case for a period of eighteen months.¹⁰ A Philadelphia police officer, accused of criminal activity by an unidentified complainant, filed suit under the Right to Know Law, seeking to examine the investigation file of the police department's internal affairs unit. A court, citing the investigative exception under the law, ruled the

officer was not entitled to examine the file where the investigation resulted in the conclusion the complaint was unfounded.¹¹ A privilege to withhold complaints and their investigation by police has been declared by the courts in order to further and protect the public interest in effective law enforcement. A citizen was denied access to State Police regulations, directives and orders concerning sobriety and drug checkpoints, drug interdiction, intelligence gathering on political activity, subversive activity and terrorism. The court found these documents fell under the investigation exception since their disclosure could lead to tip-offs, thus endangering police personnel.¹²

A county sheriff contended information on applications for firearms licenses should be protected from public disclosure under the investigation exception of the Right to Know Law. However, the court determined the exception did not apply because the applicants completed the application and the sheriff took no investigative activity before receiving a completed application.¹³ Where a newspaper was granted access to itemized county cellular telephone bills, the district attorney and drug task force were directed to edit out numbers involving investigations, but the bills of the sheriff and coroner did not fall under the investigation exclusion.¹⁴ Injury and hunting accident reports of the Pennsylvania Game Commission fall within the investigation exclusion and public inspection can be denied.¹⁵

Personnel Investigations. The transcript of a closed city council meeting which resulted in the suspension of a police officer was held not to be a public record.¹⁶ The information was held to be an official investigation of the agency. Likewise, the minutes of a closed school board personnel committee meeting investigating the activities of a teacher were held not to be a public record.¹⁷ When a borough received an unfavorable background letter on an applicant for a police position, the letter was held to fall under the investigative exception to the Right to Know Law.¹⁸ It was part of a background investigation by the borough's civil service commission and not part of the formal employment application. Where a police officer was challenging a promotional examination, the court held the examination booklets, written examination responses and scores of all applicants were public records.¹⁹ Examination results are the ultimate determinates of the municipality's decision, not independent field investigations.

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2. *Pastore v. Commonwealth, Insurance Department*, 558 A.2d 909, 125 Pa.Cmwlt. 611, 1989.
3. *Senk v. Commonwealth, Board of Pardons*, 521 A.2d 532, 104 Pa.Cmwlt. 270, 1987.
4. *Elliot v. Commonwealth, Unemployment Compensation Board of Review*, 474 A.2d 735, 82 Pa.Cmwlt. 107, 1984.
5. *Anders v. Commonwealth, Department of the Treasury*, 585 A.2d 568, 137 Pa.Cmwlt. 111, 1991.
6. *Pennsylvania Association for Children and Adults with Learning Disabilities v. Commonwealth, Department of Education*, 498 A.2d 16, 91 Pa.Cmwlt. 531, 1985.
7. *Patients of Philadelphia State Hospital v. Commonwealth, Department of Public Welfare*, 417 A.2d 805, 53 Pa.Cmwlt. 126, 1980.
8. *City of Chester v. Getak*, 572 A.2d 1319, 132 Pa.Cmwlt. 394, 1990.
9. *Scheetz v. Morning Call, Inc.*, 747 F.Supp. 1515, E.D.Pa., 1990.
10. *Sullivan v. City of Pittsburgh, Department of Public Safety*, 561 A.2d 863, 127 Pa.Cmwlt. 339, 1989.
11. *Barton v. Penco*, 436 A.2d 1222, 292 Pa.Super. 202, 1981, citing *Commonwealth v. Garvin*, 293 A.2d 33, 448 Pa. 258, 1972.
12. *Gutman v. Pennsylvania State Police*, 612 A.2d 553, 148 Pa.Cmwlt. 567, 1992; appeal denied 621 A.2d 583, 533 Pa. 638.
13. *Times Publishing Company, Inc. v. Michel*, 633 A.2d 1233, 159 Pa.Cmwlt. 398, 1993, appeal denied 645 A.2d 1321.
14. *PG Publishing v. County of Washington*, 638 A. 2d 422, 162 Pa.Cmwlt. 196, 1994.
15. 1994 Op.Atty.Gen., No. 94-1.
16. *Mellin v. City of Allentown*, 430 A.2d 1048, 60 Pa.Cmwlt. 114, 1981.
17. *Stein v. Red Lion Citizens for Decency, Inc.*, 5 D.&C.4th 266, C.P. York Co., 1989.
18. *Hovis v. Pryor*, 7 D.&C.3d 196, C.P. Franklin Co., 1978.
19. *Marvel v. Dalrymple*, 393 A.2d 494, 38 Pa.Cmwlt. 67, 1978.

Documents Confidential by Law

The third exception from disclosure as public records are documents, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court. A leading case involved a request by a newspaper for the names, addresses and amounts received by welfare recipients in Philadelphia. The court found that the material would ordinarily be public information, but access is prohibited by the Public Welfare Code.¹ Commonwealth Court reached the same conclusion finding access to a list of names and addresses of welfare recipients whose properties were liened by the Department of Public Welfare is prohibited by the Public Welfare Code.² A list of unclaimed uncashed checks in the State Treasury did not fall within the exception of release to the public being forbidden by statute or case law.³ The court held the Department could release the information without the programmatic source of the payment to avoid tax confidentiality problems or confidentiality provisions relating to welfare, unemployment and student loan programs.

A revenue examiner for the City of Philadelphia was dismissed from his job after he disclosed confidential tax information to a newspaper reporter. The fired worker claimed the information was a public record under the Right to Know Law. But the court disagreed, ruling the tax information was confidential under city regulations.⁴ Confidential status was not imperiled by the release of the information to the Bureau of Employment Security to substantiate denial of unemployment benefits.

Access to authority employee information including social security numbers was denied when Commonwealth Court held that since the federal Privacy Act of 1974 restricts the dissemination of social security numbers, any record containing them is excluded from disclosure under the Right to Know Law.⁵ Itemized cellular telephone bills of county officials did not fall under the confidentiality exclusion because they do not constitute violation of wiretapping laws.⁶

Confidentiality by law must be established by statute law or court decree. Commonwealth Court denied exemption based on general principles of law set forth in Pennsylvania case law.⁷ Otherwise, the purpose of the law in granting citizens the right to inspect public records and scrutinize the acts of public officials to make them accountable for their use of public funds would be defeated.

References

1. *McMullan v. Wohlgemuth*, 308 A.2d 888, 453 Pa. 147, 1973, appeal dismissed 94 S.Ct. 1547, 415 U.S. 970, 39 L.Ed.2d 863.
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5. *Tribune-Review Publishing Company v. Allegheny County Housing Authority*, 662 A.2d 677, Pa.Cmwlt., 1995.
6. *PG Publishing Company v. County of Washington*, 638 A.2d 522, 162 Pa.Cmwlt. 196, 1994.
7. *Envirotest Partners v. Department of Transportation*, 664 A.2d 208, Pa. Cmwlt., 1995

Personal Security or Reputation

The Right to Know Law provides an exception from disclosure for documents that would operate to the prejudice or impairment of a person's reputation or personal security. This exception has been raised as a defense in many cases concerning name and address lists and personnel files. Two major doctrines have been developed by the courts to define this exception.

First, protection of personal security has been defined by the courts to mean protection from actual personal harm rather than protection from invasion of personal privacy. Unlike the federal Freedom of Information Act,¹ the Right to Know Law does not contain any language protecting against invasion of an individual's privacy. This doctrine was applied to open real estate appraisals of property a city was acquiring.² When

issues on personal privacy were raised in a case involving school employees' attendance cards, the court ruled any minor privacy concerns such as references to illnesses or family deaths were overridden by considerations of public accountability in the need to determine if the school district had paid for unauthorized absences.³

The second doctrine is that when records are claimed to be personally harmful, they must be intrinsically harmful in themselves. The courts have rejected creating a shield of 'potential' harm, saying this would seriously impair the central objective of the Right to Know Law, allowing citizens to inspect public records regardless of their interest or its extent or nature. The court opened police payroll records which in themselves would not operate to prejudice or impair officers' reputations, even though correlation of these records with a recent crime commission report would result in identification of officers accused of corruption and misconduct.⁴ Likewise, a list of candidates for the Certified Public Accountant examination was found to be a public record because it alone would not impair an individual's reputation, even though it could later be compared with the list of successful candidates.⁵

In some cases, the courts have recognized problems of personal security or reputation that could be resolved by removal of confidential material from the records being sought. Where a list of unclaimed uncashed checks held in the State Treasury was sought, the court held the Treasury could release the information without the programmatic source of payment to avoid impairing the reputation of any check recipient.⁶ The court also ordered the State Employees Retirement Board to allow the association representing retired employees to inspect the file of retirees to obtain their addresses.⁷ If it became necessary to remove confidential information from the files, this was to be done by the agency at the expense of the association seeking the information. Where a newspaper was granted access to itemized cellular telephone bills, the district attorney and drug task force were directed to remove information related to criminal investigation in order to protect the safety of law enforcement officers and the identity of confidential informants.⁸

In cases where the issue of personal security or reputation was raised, most often the courts found that the facts did not justify the exception. The court found a report recommending revocation of a hospital's accreditation would not impair the reputation or security of hospital staff members because the report did not refer to specific staff members and it was not intrinsically harmful.⁹ Release of salaries of individual community college employees would not impair their reputations, even where the information included references to merit increases.¹⁰ Building record information on property cards maintained by a county assessment office did not impair the owners' reputation or security.¹¹ Release of a list of delinquent real estate taxpayers would not impair personal security or reputation.¹² There was nothing in the escheat records of abandoned and unclaimed property to impair the reputation of any person.¹³ A list of names and address of kindergarten pupils did not impair personal security if made public.¹⁴ Documents relating to municipal selection of a contractor will not impair bidders' reputations.¹⁵ The release of information contained in a contract between a private company and the state Department of Transportation was not exempt based on the potential damage to the company due to the disclosure of trade secrets.¹⁶

In some cases, access to records was denied by the courts on the basis of the personal security and reputation exception. Files relating to denial of a request for commutation of sentence were found to contain reports, investigations and recommendations from sentencing judges, prosecutors and victims. The court ruled their release would impair the personal security and reputations of persons mentioned in the reports.¹⁷ Where a police officer requested certain documents involved in a promotional examination, some were held to be public records, but access to other records was denied. The court held rating sheets completed by members of the civil service commission, evaluations by superiors specifically for promotional examinations and physicians' reports on fitness of applicants were not open to inspection because the information they contained would operate to prejudice or impair the reputations of other applicants.¹⁸

A newspaper sought access to an agreement reached between a school board and a teacher involved in disciplinary proceedings. The court ruled disclosure of the agreement, revealing the basis of the teacher's suspension, would be harmful to the teacher's reputation and personal security.¹⁹ In another newspaper case, a court

determined release of employment records which combined social security numbers, home addresses and telephone numbers would jeopardize the personal security of housing authority employees.²⁰

Where a newspaper sought access to information on firearms license applications, the court ruled home addresses, telephone and social security numbers were within the personal security exception. But the exception did not apply to other information in the applications, including name, race, reason for requesting the license, personal references and answers to background questions.²¹

References

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4. *Moak v. Philadelphia Newspapers, Inc.*, 336 A.2d 920, 18 Pa.Cmwlt. 599, 1975.
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6. *Anders v. Commonwealth, Department of the Treasury*, 585 A.2d 568, 137 Pa.Cmwlt. 111, 1991.
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8. *FG Publishing Company v. County of Washington*, 638 A.2d 522, 162 Pa.Cmwlt. 196, 1994.
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10. *Kegel v. Community College of Beaver County*, 55 D.&C.2d 220, C.P. Beaver Co., 1972.
11. *Westmoreland County Board of Assessment Appeals v. Montgomery*, 321 A.2d 660, 14 Pa.Cmwlt. 50, 1974.
12. *City of Philadelphia v. Doe*, 405 A.2d 1317, 45 Pa.Cmwlt. 225, 1979.
13. *Breinig v. Meyers*, 523 A.2d 1211, 105 Pa.Cmwlt. 250, 1987, appeal denied 536 A.2d 1334, 517 Pa. 610.
14. *Young v. Armstrong School District*, 344 A.2d 738, 21 Pa.Cmwlt. 203, 1975.
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16. *Envirotest Partners v. Department of Transportation*, 664 A.2d 208, Pa.Cmwlt., 1995
17. *Senk v. Commonwealth, Board of Pardons*, 521 A.2d 532, 104 Pa.Cmwlt. 270, 1987.
18. *Marvel v. Dalrymple*, 393 A.2d 494, 38 Pa.Cmwlt. 67, 1978.
19. *Mirror Printing Co., Inc. v. Altoona Area School Board*, 609 A.2d 917, 148 Pa.Cmwlt. 168, 1992.
20. *Tribune-Review Publishing Company v. Allegheny County Housing Authority*, 662 A.2d 677, Pa.Cmwlt., 1995.
21. *Times Publishing Company, Inc. v. Michel*, 633 A.2d 1233, 159 Pa.Cmwlt. 398, 1993, appeal denied 645 A.2d 1321.

Loss of Federal Funds

The fourth exception in the Right to Know Law is for cases where release of information would result in the loss of federal funds by the state or any of its subdivisions. There are very few cases where this has been an issue.

Release of information taken in a health survey to monitor the effects of the Three Mile Island incident was denied under this exception. The court found federal regulations require protection of the confidentiality of health information gathered from human subjects as a condition for receipt of federal funds. The requestor was not entitled to confidential information as an authorized collaborating researcher.¹ A court ruled contracts involving the Pennsylvania Higher Education Assistance Agency were not exempt from public disclosure under the Right to Know Act where no federal law or regulation mandated federal funds be cut off if public access was allowed.² The court said the agency only offered a hypothetical scenario concerning advice from a 'responsible official' with no support in law or regulations.

A successful bidder on a state contract to operate a vehicle emission inspection program claimed release of the contract information would result in a loss of federal funds. The court found the federal law requiring states to implement the program has no provision for withholding federal funds if public access is granted to the implementing contract.³

References

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3. *Envirotest Partners v. Department of Transportation*, 664 A.2d 208, Pa. Cmwlth., 1995.

Sunshine Act

Act of July 3, 1986, P.L. 388, No. 84
65 P.S. 271 et seq.
(including all amendments through December 14, 1998)

An Act

Requiring public agencies to hold certain meetings and hearings open to the public; and providing penalties.

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- Section 12. General Assembly meetings covered.
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- Section 14. Penalty.
- Section 15. Jurisdiction and venue of judicial proceedings.
- Section 16. Confidentiality.
- Section 17. Repeals.
- Section 18. Effective date.

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

Section 1. Short title.

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

Section 2. 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.

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 act.

Section 3. 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 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 or a meeting of an ethics committee created under rules of the Senate or House of Representatives.

“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.

“Political Subdivision.” Any county, city, borough, incorporated town, township, school district, intermediate unit, vocational school district or county institution district.

“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 9(c).

(2) For a recessed or reconvened 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 9(c).

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

Section 4. 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 7 (relating to exceptions to open meetings), 8 (relating to executive sessions) or 12 (relating to General Assembly meetings covered).

Section 5. 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 6. Minutes of meetings, public records and recording of minutes.

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 7. Exceptions to open meetings.

(a) Executive session.—An agency may hold an executive session under section 8 (relating to executive sessions).

(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 act.

Section 8. 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 subsection shall not apply to any meeting involving the appointment or selection of any person to fill a vacancy in any elected office.
- (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 advisor 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.
- (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 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 7 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 4.

Section 9. 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 act 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 the General Assembly in Capitol Complex.—Notwithstanding any provision of this section to the contrary, in case of session 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 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.

Section 10. 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 act.

Section 10.1 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 13 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 act 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 11. 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 10.

(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 12. 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 House of Representatives. Not included in the intent of this act are caucuses or meetings of any ethics committee created pursuant to the Rules of the Senate or the House of Representatives.

Section 13. Business transacted at unauthorized meeting void.

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 act 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 act, 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 act, all official action taken at the meeting shall be fully effective. The court may impose attorney fees for legal challenges commenced in bad faith.

Section 14. Penalty.

Any member of an agency who participates in a meeting with the intent and purpose by that member of violating this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding \$100 plus costs of prosecution.

Section 14.1 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 15. 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 act, 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 16. Confidentiality.

All acts and parts of acts are repealed insofar as they are inconsistent herewith, 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 matter 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.

Section 17. Repeals.

The following acts and parts of acts are repealed:

Act of June 21, 1957 (P.L. 392, No. 213), entitled, as amended, "An act requiring that the meetings of the governing bodies of political subdivisions and of certain authorities and other agencies performing essential governmental functions shall be open to the public; requiring public notice of such meetings; and prescribing penalties."

Act of July 19, 1974 (P.L. 486, No. 175), entitled, "An act requiring public agencies to hold certain meetings and hearings open to the public and providing penalties."

Section 18. Effective date.

This act shall take effect in six months.

APPROVED- The 3rd day of July, A.D. 1986.

Dick Thornburgh

Right to Know Law

Act of June 21, 1957, P.L. 390, No. 212
65 P.S. 66.1 et seq.

Amended by HB 2100, Act 100, signed June 29, 2002

Mark Schweiker, Governor

An Act

Amending the act of June 21, 1957 (P.L. 390, No. 212), entitled “An act requiring certain records of the Commonwealth and its political subdivisions and of certain authorities and other agencies performing essential governmental functions, to be open for examination and inspection by citizens of the Commonwealth of Pennsylvania; authorizing such citizens under certain conditions to make extracts, copies, photographs or photostats of such records; and providing for appeals to the courts of common pleas, “ further providing for definitions, photostats; providing for denial of access to public records, for redaction, for response to requests for access and for final agency determinations; further providing for appeal from denial of right; and providing for court costs and attorney fees, for penalty and immunity.

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

Section 1. 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:

- (1) “Agency.” Any office, department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, the Pennsylvania Turnpike Commission, the State System of Higher Education or any State or municipal authority or similar organization created by or pursuant to statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function.

“Commonwealth agency.” an agency which is a Commonwealth agency as that term is defined under 62 Pa.C.S. § 103 (relating to definitions).

“Non-Commonwealth agency.” An agency which is not a Commonwealth agency.

- (2) “Public record.” Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term “public records” shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act.

“Record.” Any document maintained by an agency, in any form, whether public or not.

“Requester.” A person who is a resident of the Commonwealth and requests a record pursuant to this act.

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

Section 2. Procedure for access to public records.

- (a) General rule. Unless otherwise provided by law, a public record shall be accessible for inspection and duplication by a requester in accordance with this act. A public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for access during the regular business hours of an agency. Nothing in this act shall provide for access to a record which is not a public record.
- (b) Requests. Agencies may fulfill verbal requests for access to records and anonymous requests for access to records. In the event that the requester wishes to pursue the relief and remedies provided for in this act, the requester must initiate such relief with a written request.
- (c) Written requests. A written request for access to records may be submitted in person, by mail, by facsimile or, to the extent provided by agency rules, any other electronic means. 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.
- (d) Electronic access. In addition to the requirements of subsection (a), an agency may make its public records available through any publicly accessible electronic means. If access to a public record is routinely available by an agency only by electronic means, the agency shall provide access to inspect the public record at an office of the agency.
- (e) Creation of a public record. When responding to a request for access, an agency shall not be required to create a public record which does not currently exist or to compile, maintain, format or organize a public record in a manner in which the agency does not currently compile, maintain, format or organize the public record.
- (f) Conversion of an electronic record to paper. If a public record is only maintained electronically or in other nonpaper media, an agency shall, upon request, duplicate the public record on paper when responding to a request for access in accordance with this act.
- (g) Retention of records. Nothing in this act is intended to modify, rescind or supersede any record retention and disposition schedule established pursuant to law.

Section 3. Section 3 of the act is repealed.

Section 3.1. Access to public records.

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

Section 3.2. Redaction.

If an agency determines that a public record contains 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 and cannot be separated, the agency shall redact from the public 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 public 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 section 3.3.

Section 3.3. Commonwealth agency's response to written requests for access.

- (a) General rule. Upon receipt of a written request for access to a record, a Commonwealth agency shall make a good faith effort to determine if the record requested is a public record and to respond as promptly as possible under the circumstances existing at the time of the request, but shall not exceed ten business days from the date the written request is received by the Commonwealth agency head or other person designated by the Commonwealth agency for receiving such requests. If the Commonwealth agency fails to send the response within ten business days of receipt of the written request for access, the written request for access shall be deemed denied.
- (b) Exception. Upon receipt of a written request for access, if a Commonwealth agency determines that one of the following applies:
 - (1) the request for access requires redaction of a public record in accordance with section 3.2;
 - (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 public record subject to access under this act;
 - (5) the requester has not complied with the Commonwealth agency's policies regarding access to public records; or
 - (6) the requester refuses to pay applicable fees authorized by section 7 of this act, the Commonwealth agency shall send written notice to the requester within ten business days of the Commonwealth agency's receipt of the request for access. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided. If the date that a response is expected to be provided is in excess of 30 days, following the ten business days allowed for in subsection (a), the request for access shall be deemed denied.
- (c) Denial. If a Commonwealth agency's response is a denial of a written request for access, whether in whole or in part, a written response shall be issued and include:
 - (1) A description of the record requested.
 - (2) The specific reasons for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is not a public record, the specific reasons for the agency's determination that the record is not a public record shall be included.
 - (3) The typed or printed name, title, business address, business telephone number and signature of the public official or public employee on whose authority the denial is issued.
 - (4) Date of the response.

- (5) The procedure to appeal the denial of access under this act.
- (d) Certified copies. If a Commonwealth agency's response grants a request for access, the Commonwealth agency shall, upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees pursuant to section 7.

Section 3.4. Non-Commonwealth agency's response to written requests for access.

- (a) General rule. Upon receipt of a written request for access to a record, a non-Commonwealth agency shall make a good faith effort to determine if the record requested is a public record and to respond as promptly as possible under the circumstances existing at the time of the request, but shall not exceed five business days from the date the written request is received by the non-Commonwealth agency head or other person designated in the rules established by the non-Commonwealth agency for receiving such requests. If the non-Commonwealth 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.
- (b) Exception. Upon receipt of a written request for access, if a non-Commonwealth agency determines that one of the following applies:
 - (1) The request for access requires redaction of a public record in accordance with section 3.2;
 - (2) The request for access requires the retrieval of a public record stored in a remote location;
 - (3) A timely response to the request for access cannot be accompanied due to bona fide and specified staffing limitations;
 - (4) A legal review is necessary to determine whether the record is a public record subject to access under this act;
 - (5) The requester has not complied with the non-Commonwealth agency's policies regarding access to public records; or
 - (6) The requester refuses to pay applicable fees authorized by section 7, the non-Commonwealth agency shall send written notice to the requester within five business days of the non-Commonwealth agency's receipt of the request notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed in subsection (a), the request for access shall be deemed denied.
- (c) Denial. If a non-Commonwealth agency's response is a denial of a written request for access, whether in whole or in part, a written response shall be issued and include:
 - (1) A description of the record requested.
 - (2) The specific reasons for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is not a public record, the specific reasons for the agency's determination that the record is not a public record shall be included.
 - (3) The typed or printed name, title, business address, business telephone number and signature of the public official or public employee on whose authority the denial is issued.
 - (4) The date of the response.
 - (5) The procedure to appeal the denial of access under this act.
- (d) Certified copies. If a non-Commonwealth agency's response grants a request for access, the non-Commonwealth agency shall, upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees pursuant to section 7.

Section 3.5 Final agency determination.

- (a) Filing of exceptions. If a written request for access is denied or deemed denied, the requester may file exceptions with the head of the agency denying the request for access with the head of the agency denying the request for access within 15 business days of the mailing date of the agency's response or within 15 days of a deemed denial. The exceptions shall state grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the agency for delaying or denying the request.
- (b) Determination. Unless the requester agrees otherwise, the agency head or his designee shall make a final determination regarding the exceptions within 30 days of the mailing date of the exceptions. Prior to issuing the final determination regarding the exceptions, the agency head or his designee may conduct a hearing. The determination shall be the final order of the agency. If the agency head or his designee determines that the agency correctly denied the request for access, the agency head or his designee shall provide a written explanation to the requester of the reason for the denial.

Section 4. Judicial appeal.

- (a) Commonwealth agency. Within 30 days of the mailing date of a final determination of a Commonwealth agency affirming the denial of access, a requester may file a petition for review or other document as might be required by rule of court with the Commonwealth Court.
- (b) Other agency. Within 30 days of a denial by a non-Commonwealth agency under section 3.4 (c) or of the mailing date of a final determination of a non-Commonwealth agency affirming the denial of access, a requester may file a petition for review or other document as might be required by rule of court with the court of common pleas for the county where the non-Commonwealth agency's office or facility is located or bring an action in the local magisterial district. A requester is entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached.
- (c) Notice. An agency shall be served notice of actions commenced in accordance with subsection (a) or (b) and shall have an opportunity to respond in accordance with applicable court rules.
- (d) Record on appeal. The record before a court shall consist of the request; the agency's response; the requester's exceptions, if applicable; the hearing transcript, if any; and the agency's final determination, if applicable.

Section 4.1. Court costs and attorney fees.

- (a) Reversal of agency determination. If a court reverses an agency's final determination, 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 willfully or with wanton disregard deprived the requester of access 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. If a court affirms an agency's final determination, the court may award reasonable attorney fees and costs of litigation, or an appropriate portion thereof, to the agency if the court finds that the legal challenge to the agency's final determination 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 5. Penalties.

- (a) Summary offense. An agency or public official who violates this act with the intent and purpose of violating this act commits a summary offense subject to prosecution by the attorney general or the appropriate district attorney and shall, upon conviction, be sentenced to pay a fine of not more than \$300 plus costs of prosecution.
- (b) Civil penalty. 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 \$300 per day until the public records are provided.

Section 6. Immunity.

- (a) General rule. Except as provided in sections 4.1 and 5, and other statutes governing the release of records, no agency, public official or public employee shall be liable for civil or criminal damages or 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 7. Fee limitations.

- (a) Postage. Fees for postage may not exceed the actual cost of mailing.
- (b) Duplication. 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 must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.
- (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 public 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 native media as provided by subsection (b) unless the requester specifically requests for the public record to be duplicated in the more expensive medium.
- (e) Enhanced electronic access. If an agency offers enhanced electronic access to public records in addition to making the public 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 public 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 and may not be established with the intent or effect of excluding persons from access to public 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 public record, including, but not limited to, when:
 - (1) The requester duplicates the public 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 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 8. Implementation.

- (a) Requirement. An agency shall establish written policies and may promulgate regulations necessary to implement this act.
- (b) Content. The written policies shall include the name of the office to which requests for access shall be addressed and a list of applicable fees.
- (c) Prohibition. A policy or regulation may not include any of the following:
 - (1) A limitation on the number of public 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 which are public records.
- (d) Posting. The policies shall be conspicuously posted at the agency and may be made available by electronic means.

Section 9. Practice and procedure.

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

Section 10.

If an agency receives a request for a record that is subject to a confidentiality agreement executed before the effective date of this act, the law in effect at the time the agreement was executed, including judicial interpretation of the law, shall govern access to the record, even if the record is a public record unless all parties to the confidentiality agreement agree in writing to be governed by this act.

Section 11.

This act shall take effect in 180 days.

APPROVED – The 29th day of June, A.D. 2002

Mark Schweiker, Governor

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APPROVED POLY

