Pennsylvania's Open Records Law: An

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Representative Experience

- Pennsylvania's broad new Right to Know Law became effective on Jan. 1, 2009. The new law made a significant change in existing law, by imposing upon every record held by the Commonwealth a presumption that it is a public record, and placing the burden of proof on the agency possessing the record to prove that it is not required to be disclosed in response to anyone's request. The law also created a new agency which is specifically dedicated to supervising and enforcing it, the Office of Open Records (OOR).
- In addition to imposing this presumption on Commonwealth agency records, the law also applies to every political subdivision within the state, from cities and boroughs to sewer districts and charter schools. Every agency was also required to appoint or create an Open Records Officer to handle requests for information. In addition, the law prohibits any agency or subdivision from imposing a limit on the number of records which might be requested, and forbids anyone from asking why the records are requested.
- The scope of information considered subject to disclosure is deliberately broad, and applies not only to documents, but all forms of electronic communication, including audio and video records, email and text messages.
- It is not required that the requester be a citizen of Pennsylvania. Any citizen of the United States may make the request, including organizations and corporations. Requests may be made by mail, fax, or email to any agency. Agencies were permitted to create their own forms, but all agencies are required to honor a uniform form created by the OOR. A request may be made to any agency employee, who is required to then direct it to the agency Open Records Officer.
- Upon receiving a request, an agency is required to respond within five days. The agency may give itself an extension of not more than 30 days, and even if it does, it must also provide some response within the five day period. An agency may charge no more than 25 cents a page for photocopying.
- If the agency denies the request, it must specifically identify the records which are being refused, and provide the legal and factual grounds for denial. It must also inform the requester of how to appeal the decision. An appeal must be filed within 15 days. On appeal, the requester has the burden of responding to the agency's stated reasons for denial, and now also has the burden of proving that the record should be deemed public. The OOR will then issue a docketing letter, and all parties have only seven days from the *date of mailing* to submit their arguments and evidence. Statements of facts must be sworn affidavits to be admissible. The OOR is to issue a decision within 30 days of the receipt of the appeal. The OOR's decision may then be appealed by filing with any Court of Common Pleas (for a local entity) or with the Commonwealth Court, directly (for state agencies).
- The law also prescribes penalties. If an agency is deemed to have refused a request in bad faith, it can be made to pay attorney's fees. If a requester's appeal is deemed frivolous, the requester can be made to pay agency attorney fees. There is also a flat $1,500 sanction if an agency denies a request in bad faith and a $500 per day sanction if an agency fails to fulfill a *judicial* order to disclose records.
- The law does endeavor to provide some protection to third parties who might have submitted proprietary or confidential information to the state. An agency is required to notify a third party of a request for such a record. However, that requirement is only triggered if the third party has submitted a *written statement* to the agency stating that the records in question contain proprietary information. If records contain personal identification information (from birthdates to home addresses), the agency is not required to provide such notice. Furthermore, an agency may exercise its discretion to *disclose* an otherwise exempt record if (a) disclosure is not prohibited under any law, (b) the record is not protected by a *privilege* and (c) the head of the agency determines that the public interest would be served by

disclosure.

- The law does provide that an agency can refuse "disruptive requests," but this is defined to mean that the requester has made multiple requests for the same record, and that responding to these repeated requests places an unreasonable burden on the agency.
- The law provides for some specific categories of records which are not presumed to be public records. These include some obvious categories like medical records, employee personnel files, criminal investigations and trade secrets. Some of the categories of exemptions are not so obvious, such as any correspondence between an individual and a member of the General Assembly, correspondence with insurance companies, scholastic records, personal notes and 'draft' records.