

New Revisions to Pennsylvania's Right to Know Law

On June 29, 2002, Governor Mark Schweiker signed into law Act 100 of 2002 amending Pennsylvania's Right to Know Law. The new legislation, which takes effect on December 26, 2002, increases the responsibilities of public agencies, such as public schools, to ensure that residents of the Commonwealth have access to public information. Act 100 brings Pennsylvania's Right to Know Law closer to mirroring the numerous requirements of its federal counterpart, the Freedom of Information Act, which applies to federal agencies.

The new law directs that public records of public agencies be available for access during regular business hours. Besides traditional paper records, Act 100 allows public agencies to make their public records available through any publicly accessible electronic means. However, if access to the public record routinely is available only by electronic means, the public agency must allow inspection of the public record at one of its offices.

Upon receipt of a written request for access to a record, a public agency must make a good faith effort to determine if the requested record is a public record and must provide a written response to the requester within 5 business days of receipt of the request. This time limit is a significant new requirement. If a public agency fails to respond within the required time frame, the request will be deemed denied.

There are six exceptions to responding within the required time frame: (1) the request involves a record that would have to be redacted (blacking out of confidential information); (2) the request requires retrieval of a record stored in a remote location; (3) a timely response to the request cannot be accomplished due to a bona fide and specified staffing limitation; (4) a legal review is necessary to determine whether the record is a public record subject to access; (5) the requester has not complied with the public agency's policies regarding access to public records; or (6) the requester refuses to pay applicable fees authorized by law. If the final expected date of response is more than 30 days beyond the initial 5 business days, the request for access will be deemed denied. Again, this is a new requirement in the law that will increase the paperwork for all public agencies.

The new requirements go on to provide that if a public agency denies a request for access, whether in whole or in part, the written response shall include: (1) a description of the record requested; (2) the specific reasons for the denial, including a citation of supporting legal authority; (3) the 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 response; and (5) the procedure to appeal the denial of access. A public agency may not deny a request due to the intended use of the public record by the requester.

Within 30 days of the denial or mailing date of the final determination by a public agency, the requester has the right to file a petition for review with the local court of common pleas or bring action in the local magisterial district. If a court reverses the public agency's denial, it may award the requester reasonable attorney fees and costs of litigation if it determines that: (1) the public agency willfully or with wanton disregard denied the request; or (2) the public agency's exemptions, exclusion, or defenses asserted in its final determination were not based on a reasonable interpretation of the law.

If a public agency grants the request, it now is required to provide the public record in the same medium, e.g. paper, computer file, etc., that is requested (if it exists in that medium). Hence, if a computer file of a public record exists and a requester so requests, the public agency must provide an electronic copy of that file. Additionally, if a public record is only maintained electronically or in other non-paper media, a public agency must duplicate the public record onto paper, if so requested.

Act 100 left unchanged the existing rule that a public agency is not required to create a public record that does not currently exist or to compile, maintain, format, or organize a public record in a manner in which the public agency does not currently compile, maintain, format, or organize that record. Also, as before, a public agency is allowed to charge a requester a fee for postage, duplication, certification fees, and other necessary and reasonable costs related to producing a copy of the public record.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.