

JULY 2020

## Pennsylvania Amends Law Governing Access to Agency Records During Emergency Declarations

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Obtaining public records in a timely fashion from government agencies in Pennsylvania can be an arduous task during ordinary times. Enter a worldwide pandemic that forced most workers, including civil servants, to begin working from home and the already-difficult task of promptly obtaining records became almost impossible. After some Commonwealth agencies used the ongoing COVID-19 disaster declaration as a blanket reason to delay responding to record requests, the Pennsylvania General Assembly enacted House Bill 2463 as Act 77 of 2020 (“Act 77”) which will require Commonwealth agencies to respond to record requests during an emergency declaration. Act 77 also prohibits Commonwealth agencies from using a disaster declaration as a basis for denying record requests.

Act 77 followed an unusual path from introduction to enactment as the bill passed both houses of the General Assembly unanimously and became law without Governor Tom Wolf’s signature, despite a veto threat, after many civil liberties groups and editorial boards called for its passage.

### Requesting Records During an Emergency

The primary goal of Act 77 is to require Commonwealth agencies to continue processing record requests during an emergency declaration. The Act clarifies that the mere occurrence of a disaster declaration does not permit agencies to ignore requests for records under Pennsylvania’s Right-to-Know Law (65 P.S. §§ 67.101 – 67.3104). Furthermore, Act 77 specifically prohibits the Governor from directing a Commonwealth agency “to ignore requests for records or suspend the Commonwealth agency’s process to answer a request for records during a disaster declaration.”

Commonwealth agencies are obligated to respond to record requests even if an order of the Governor forces the physical closure of government offices. Act 77 also creates a new cause of action that authorizes a requester to petition the Pennsylvania Commonwealth Court to compel a Commonwealth agency to respond to a record request if the agency fails to respond to the request during a disaster declaration.

### Act 77 Requires Commonwealth Agencies to Provide Data Used to Inform Emergency Declaration Decisions

An important function of Act 77 is to promote public access to data which informs government responses to disaster emergencies. Importantly, the new law clarifies that the following information is considered a “public record” under the Right-to-Know Law:

1. All data used by a Commonwealth agency in formulating rules, policies, or actions in relation to disaster declarations;
2. Processes by which Commonwealth agencies determine how they will collect data to formulate such rules, policies, or actions; and
3. Any quantitative or predictive models based on the data collected by a Commonwealth agency which is subsequently used to inform those rules, policies, or actions.

Governor Wolf stated in a press release his understanding that Commonwealth agencies may still deny access to such records if they are otherwise protected under an existing Right-to-Know Law exemption.

Notably, Act 77 only applies to Commonwealth agencies (i.e., those agencies under the supervision of the Governor). This means that local agencies, independent agencies, judicial agencies, and legislative agencies (as those agencies are defined under the Right-to-Know Law) are not impacted by the Act 77 requirements.

### Benefits of Access

Act 77 will benefit the public by providing a process for obtaining agency records during disaster declarations. Entities doing business in Pennsylvania, particularly with regard to real property, environmental, and energy projects, will especially benefit from Act 77 since the ability to obtain agency records in connection with due diligence has been curtailed during the COVID-19 emergency declarations.

### Looking Forward

Act 77, which went into effect on July 27, 2020, provides that all record requests received by a Commonwealth agency since March 6, 2020 (the date of Governor Wolf's initial COVID-19 emergency declaration) must be treated as if the request had been received by the agency on the effective date of Act 77.

Act 77 also requires the Office of Open Records (the agency responsible for providing information relating to the implementation of the Right-to-Know Law) to issue guidelines specifying how Commonwealth agencies should respond to record requests during an emergency declaration. Those guidelines are expected to be published in early August 2020.

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