

SCHEDULE B

CHAPTER 11 APPEAL OF AGENCY DETERMINATION

Section 1101. Filing of appeal.

(a) Authorization.—

(1) If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under section 503(d) within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

(2) Except as provided in section 503(d), in the case of an appeal of a decision by a Commonwealth agency or local agency, the Office of Open Records shall assign an appeals officer to review the denial.

(b) Determination.—

(1) Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).

(2) If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.⁴

(3) Prior to issuing a final determination, a hearing may be conducted. The determination by the appeals officer shall be a final order. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the agency.

(c) Direct interest.—

(1) A person other than the agency or requester with a direct interest in the record subject to an appeal under this section may, within 15 days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the requester's or agency's position.

(2) The appeals officer may grant a request under paragraph (1) if

- (i) no hearing has been held;
- (ii) the appeals officer has not yet issued its order; and
- (iii) the appeals officer believes the information will be probative.

(3) Copies of the written request shall be sent to the agency and the requester.

Section 1102. Appeals officers.

(a) Duties.--An appeals officer designated under section 503 shall do all of the following:

(1) Set a schedule for the requester and the open-records officer to submit documents in support of their positions.

(2) Review all information filed relating to the request. The appeals officer may hold a hearing. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be

reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.

(3) Consult with agency counsel as appropriate.

(4) Issue a final determination on behalf of the Office of Open Records or other agency.

(b) Procedures.--The Office of Open Records, a judicial agency, a legislative agency, the Attorney General, Auditor General, State Treasurer or district attorney may adopt procedures relating to appeals under this chapter.

(1) If an appeal is resolved without a hearing, 1 Pa. Code Pt. II (relating to general rules of administrative practice and procedure) does not apply except to the extent that the agency has adopted these chapters in its regulations or rules under this subsection.

(2) If a hearing is held, 1 Pa. Code Pt. II shall apply unless the agency has adopted regulations, policies or procedures to the contrary under this subsection.

(3) In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.