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MEMORANDUM

TO: Pennsylvania House Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: May 5, 2020

RE: SUPPORT FOR HOUSE BILL 2463 P.N. 3699 (GROVE)

[HB 2463](#) (PN 3699) would ensure that the [Right to Know Law](#) remains in effect during disaster declarations by creating a new section under the Pennsylvania Administrative Code ([P.L. 177, No. 175](#)) – “Access to Public Records During Disaster Declaration.” This section would require that commonwealth agencies continue to follow procedures established by the Office of Open Records even if they are otherwise closed due to a disaster declaration. If that agency fails to follow the policies established by the Office of Open Records, a requester may petition the Commonwealth Court to compel a response.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to support House Bill 2463 for the following reasons:

HB 2463 is appropriately limited in scope

HB 2463 applies only:

- During a disaster emergency declared by the Governor
- To commonwealth agencies or commissions of the executive branch (not to county or municipal agencies)
- To those commonwealth agencies or commissions that have been closed due to the disaster declaration

HB 2463 clarifies/expands the types of records to be made publicly accessible

HB 2463 defines additional types of records created by commonwealth agencies that should be made publicly available, to ensure that the public is aware of what information the Commonwealth is basing its decisions on for disaster declarations. These are reasonable records to request and are specifically tailored to records created in relation to a disaster declaration. They include:

1. Data used by a commonwealth agency for any rules, policies or actions taken by the agency in relation to a disaster declaration.
2. The process by which a commonwealth agency determines how the agency will collect the data used by that agency for any rules, policies or actions taken by the agency in relation to a disaster declaration.
3. Any quantitative or predictive models based on the data collected by a commonwealth agency which is then used by that agency for any rules, policies or actions taken by the agency in relation to a disaster declaration.

HB 2463 ensures government transparency while maintaining flexibility needed during an emergency

The ACLU has long supported disclosure from public agencies unless there are compelling and legitimate reasons to withhold information. While we fully appreciate the need for some flexibility in governance during this unique public health crisis, government transparency and support of the public's right to know are more, not less, critical during emergency situations. HB 2463 strikes the right balance between flexibility regarding operational challenges and the public's right to oversee the work of its government. The bill adheres to the existing procedures of the Office of Open Records and, because it retains all the normal [exceptions](#) to disclosure under the Right to Know Law, it would not risk violating any personal or constitutional privacy protections. Most importantly, the bill resolves the intolerable current situation where the Right to Know Law is effectively suspended for as long as this disaster carries on, which means that for months, the public has no recourse to request information from commonwealth agencies that remain physically closed.