



# pennsylvania

OFFICE OF OPEN RECORDS

## CITIZENS' GUIDE

The mission of the Office of Open Records (OOR) is to implement and enforce the state's Right-to-Know Law (RTKL) and serve as a resource for citizens, agencies, public officials, and members of the media. As part of that mission, the OOR has developed this "**Citizens' Guide**" to provide an overview of the RTKL.

Agencies are to ensure that citizens are provided access to records to which they are entitled. Equally important, Requesters are to use good judgment in seeking records from the public body and not use this law to harass or overburden a public body from performing its other functions. The Office of Open Records encourages patience and a spirit of cooperation among all parties.

If you have questions, contact the OOR at (717) 346-9903 or [openrecords@pa.gov](mailto:openrecords@pa.gov).

## PRESUMPTION OF OPENNESS

Under the RTKL, all records are presumed to be public unless disclosure is barred or permitted by: (1) state or federal law or regulation; (2) judicial order; (3), privilege, such as attorney-client or doctor-patient; or (4) one of the exceptions in Section 708 of the RTKL.

The agency bears the burden of proof to establish why a record should not be released.

## AGENCIES SUBJECT TO THE RTKL

**Commonwealth Agencies:** Any office, department, authority or other parts of the executive branch, state-affiliated entities, independent agencies, and includes the Governor, Attorney General, Auditor General and the Treasury Department.

**Local Agencies:** Any political subdivision, intermediate unit, or charter, public trade or vocational school [or] any local, intergovernmental, regional or municipal agency, authority, council, board commission or similar governmental entity.

**Legislative Agencies:** The Senate, House of Representatives, and many committees and commissions such as the Capitol Preservation Committee, the Independent Regulatory Review Commission, the Center for Rural Pennsylvania, and the Legislative Audit Advisory Commission. For a complete list, see Section 102 of the RTKL. See Section 303 of the RTKL for additional information on how the RTKL applies to legislative agencies.

**Judicial Agencies:** Any entity or office of the unified judicial system, including Magisterial District Judges. See Section 304 of the RTKL for additional information on how the RTKL applies to judicial agencies.

## **RECORDS COVERED BY THE RTKL**

Make sure when you file a RTK request that you're seeking records and not just asking questions. The law governs the release of records, not answering questions.

A record is defined as "any information regardless of its physical form or character that documents a transaction or activity of an agency and is created, received, or retained pursuant to law OR in connection with a transaction, business or activity of an agency."

Records can take many forms, including papers, letters, maps, books, tapes, photographs, film or sound recordings, information stored or maintained electronically, and data-processed or image-processed documents. Note that e-mails can also be a form of public records, subject to any exceptions.

## **EXCEPTIONS**

All agency records are subject to the RTKL. However, not all records are public records. The law contains 30 exceptions, cited in Section 708, that permit an Agency to withhold records. An Agency may deny release of a record if it falls within one of the 30 exceptions designed to protect information that is confidential or may jeopardize safety or investigations. Types of records that can be withheld include records related to personal or public security, DNA/RNA records, autopsy records, Social Security numbers, personal financial information, personal email addresses, marital status, identity of a covert law enforcement officer, home address of judges or law enforcement, confidential source records, and victim information. Other laws also make certain records non-public.

## **HOW TO FILE A REQUEST**

A requester can file a Right-to-Know request in four ways: in person, e-mail, postal mail, and fax. When submitting a request to the Agency, **always** retain a copy for your file. A copy of the request will be necessary if you're denied access to records and decided to file an appeal. If you do not have a copy of the actual request, your appeal will be dismissed as insufficient.

The first thing a requester should do to file a RTK request is check with the local or Commonwealth Agency to determine the Open Records Officer (each agency is required by law to have one) and whether the agency requires use of its own Right-to-Know request form. You can always use the Uniform Request Form available on our website to file a request. Address your request to the Open Records Officer. Some agencies use the term "Right-to-Know Officer."

Make sure your request for records is **specific and concise**. Identify as specifically as you can the records you want, so that an agency can quickly locate them and determine whether they are public record.

## **WHAT TO EXPECT FROM THE AGENCY**

An Agency has **five business days** to respond in writing to: (1) grant the request; (2) deny the request, citing the legal basis for the denial or partial denial; or (3) invoke a 30-calendar day extension for certain reasons.

The clock starts the day after the RTK request is received during regular business hours. In other words, an agency has five business days to respond to a request, whether you place the request in person or by mail.

Acceptable grounds for a 30-calendar day extension include: off-site location of records, staffing limitations, need for legal review or redaction, complex request, or the requester did not pay applicable fees as required or failed to follow agency policy.

If an agency does not respond to a request in the allotted time, the request is deemed denied, and you have the right to file an appeal with the OOR.

## **HOW TO FILE AN APPEAL**

If an Agency denies a record, or a portion of a record, the requester has a right to file an appeal with the OOR.

The appeal must be submitted to the OOR within 15 business days of the mailing date of the Agency's response. Appeals should be sent to the Office of Open Records, 333 Market Street, 16<sup>th</sup> Floor, Harrisburg, PA 17101-2234. They may also be submitted via facsimile to 717-425-5343 or via email to [openrecords@pa.gov](mailto:openrecords@pa.gov) as a Microsoft Word or PDF attachment.

All appeals must be in writing and shall include the following information that may be submitted using the Appeals Form found on <http://openrecords.pa.gov>:

- A copy of the original Right-to-Know Request.
- A copy of the denial letter submitted by the Agency.
  - If the agency does not respond in writing within five business days, the request is “deemed denied” (automatically denied) and can be appealed.
- State the grounds you believe the record is a public record – you must state why you believe the requested record is a public record – a general statement that the record is public under the RTKL is insufficient.
- Address **all** grounds that the Agency raised in its denial – you must state why you believe each of the agency's denial, arguments, and exemptions are incorrect – a general statement that the agency is incorrect is insufficient.

The OOR is required to dismiss any appeal that does not include this information.

Appeals which are filed by hard copy (*i.e.*, by mail) MUST be submitted on 8 ½ x 11 or 8 ½ x 14 inch paper. Failure to submit hard copy appeals on 8 ½ x 11 or 8 ½ x 14 inch paper will result in the appeal being dismissed, unless the party filing the document specifically seeks and is granted permission to file non-conforming papers. Any other documents filed in an appeal should be filed on 8 ½ x 11 or 8 ½ x 14 inch paper to the extent possible.

When the OOR receives the appeal, it has 30 days from the date of receipt of the appeal to issue a Final Determination.

The OOR may conduct a hearing (which is a non-appealable decision) or an *in camera* review. It may decide the case on the basis of the information filed with the Office. It may seek additional information from the involved parties. In most cases, the OOR will issue a Final Determination based on information and evidence provided to our Office without conducting a hearing.

When the OOR issues a Final Determination it is binding on the Agency and requester. If the Agency or the requester wants to appeal the ruling of the OOR, the appeal must be filed with the appropriate court within 30 calendar days of the mailing of the Final Determination by the Office.

If the parties appeal a Final Determination to Commonwealth Court or a Court of Common Pleas, the RTKL requires that the OOR be served notice of the appeal.

### **FEES**

The fee for a standard 8 1/2 x 11 black and white document is up to 25 cents per page.

- Postage fees may not exceed the actual cost of mailing.
- If an Agency offers enhanced electronic access it can establish user fees that must be approved by the OOR.
- An Agency cannot charge for the time it takes to redact a document or the legal review needed to determine if a document is a public record.
- An Agency may require pre-payment if the fees are expected to exceed \$100.
- An Agency may withhold public records if you have not paid for previous requested records.

### **PENALTIES & ATTORNEYS FEES**

The law provides a civil penalty of up to \$1,500 if an Agency denies access to a public record in bad faith and up to \$500 per day when an Agency does not promptly comply with a court order to release records under the act.

If a court holds that records were denied based on an unreasonable interpretation of law, or in bad faith, an Agency can be required to pay attorneys' fees. If an appeal is deemed frivolous by a court, the requester or agency can also be required to pay attorneys' fees.