



# pennsylvania

## OFFICE OF OPEN RECORDS

### **CITIZEN'S GUIDE**

The Mission of the Office of Open Records is to implement and enforce the state's Right-to-Know Law and serve as a source for citizens, agencies, public officials and members of the media in obtaining public records of their government. As part of that mission, the Office of Open Records has developed a "**Citizens' Guide**" that will provide a basic overview of the Right-to-Know Law.

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 any questions or need more information please contact the Office of Open Records at (717) 346-9903 or [openrecords@pa.gov](mailto:openrecords@pa.gov).

### **PRESUMPTION OF OPENNESS: Records are Public Unless....**

The most significant change to the Right-To-Know Law is that all records are presumed to be public records unless disclosure is barred by: 1) state or federal law or regulation, or judicial order; or 2), privilege, e.g., attorney-client, doctor-patient, or 3) one of the exceptions in Section 708 of the Right-to-Know Law.

The burden is now 100 percent on the Agency to establish why the record is not available.

### **WHO IS SUBJECT TO THE LAW: Agencies Must Comply**

**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 like the Capitol Preservation Committee, the IRRRC, Center for Rural Pennsylvania, the Legislative Reapportionment Commission, and Legislative Audit Advisory Commission to name a few. For a complete list, see Section 102.

**Judicial Agencies:** Any entity or office of the unified judicial system, like Magisterial District Judges

### **WHAT IS COVERED BY THE LAW: Records, not Questions**

Make sure when you file a RTK request, you are seeking **records** and not just asking questions. The law governs 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 a data-processed or image-processed documents. Note that e-mails can also be a form of public records, subject to any exceptions.

### **EXCEPTIONS: Protects Certain Information From Disclosure**

All agency records are subject to the Right-to-Know Law, 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, victim information.

### **HOW TO FILE A REQUEST**

A requester can file a Right-to-Know request in four ways. You can submit your request by:

1. Fax
2. Electronic mail
3. In person
4. U.S. Mail

When submitting a request to the Agency, **always** retain a copy for your file. A copy of this RTK request would be necessary if you should need to file an appeal to our Office upon

denial. 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 must 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.”

You should make sure that 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.

Please be advised that if you send an e-mail request or file a request in person it does not speed-up the time that that an Agency has to respond to your request. An Agency has five business days to respond to a request, whether you place the request in person or by mail.

### **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 denial/partial denial) or 3) invoke a 30-calendar day extension for certain reasons.

The clock starts the day after the request is received during regular business hours.

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 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 Office of Open Records.

### **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 Office of Open Records.

The appeal must be submitted to the Office of Open Records within 15 business days of the mailing date of the Agency’s response. Appeals should be sent to the Office of Open Records, Commonwealth Keystone Building, 400 North St., 4th Floor, Harrisburg, PA 17120-0225. 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 Forms found on <http://openrecords.state.pa.us>:

- 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 Right-to-Know Law 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 Office of Open Records is required to dismiss any appeal that does not include this information.

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

The Office of Open Records 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 Office of Open Records will issue a Final Determination based on information and evidence provided to our Office without conducting a hearing.

When the Office of Open Records 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 Office of Open Records, 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 Right-to-Know Law requires that the Office of Open Records 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 Office of Open Records.
- 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**

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.

## **ATTORNEYS FEES**

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. In addition, if an RTK appeal is deemed frivolous by the court, the requester or agency can be required to pay attorneys' fees.