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# CITIZENS' GUIDE TO THE RIGHT-TO-KNOW LAW AND THE SUNSHINE ACT

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The Office of Open Records (OOR) is tasked with providing information and training regarding Pennsylvania's Right-to-Know Law (RTKL) and Sunshine Act (also known as the open meetings law). The *Citizens' Guide to the Right-to-Know Law and Sunshine Act* provides an overview of both.

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## Presumption of Openness Under the RTKL

The presumption of access presumes records in the possession, custody or control of a government agency are public records and this concept forms the cornerstone of Pennsylvania's [Right-To-Know Law](#) and its remedial intent. Under the RTKL, all records in the possession of agencies subject to the law are presumed to be public and must be provided unless the record may be withheld under, or disclosure is barred 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.

In the event that a request for a record is denied and appealed, the agency bears the burden of proof to establish that it may withhold the record. Overcoming that burden of proof requires a preponderance of the evidence.

## Agencies Subject to the RTKL

The RTKL defines four categories of agencies:

**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. Note: the unified judicial system relies on [Rule of Judicial Administration 509](#) to address requests for access to

financial records of the court system. Rule 509 is similar to, but not the same as, the RTKL. Likewise, it is important to remember the distinction between financial records of the courts and “judicial records” which are records filed with or relied upon by the court in cases or controversies. Judicial records are presumptively public pursuant to the United States and Pennsylvania Constitutions as well as common law and are not subject to access or limitations to access under the RTKL. Requests for access to judicial records are made pursuant to the [Public Access Policy of the Unified Judicial System](#), which must be applied consistent with constitutional and common law public access requirements.

## Records Subject to the RTKL

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.” This is a broad definition consistent with the remedial intent of the law.

Records can take many forms, including letters, memos, emails, text messages, metadata, maps, books, tapes, photographs, film or sound recordings, information stored or maintained electronically, and data-processed or image-processed documents. In short, the *form* of a record is generally irrelevant under the RTKL. The *content* of a record is far more important.

## Exceptions

All records in the possession, custody or control of a local or commonwealth agency are subject to the RTKL. However, the law contains 30 exceptions, cited in Section 708, that allow agencies to withhold records in appropriate circumstances.

An agency may deny access to a record if it falls within one of the 30 exceptions designed to protect certain information. Some examples of the types of records that may be withheld include records related to personal or public security, Social Security numbers, personal financial information, personal email addresses, marital status, the identity of a covert law enforcement officer, home address of judges or law enforcement, DNA and RNA records, and victim information.

It is important to remember that the RTKL is a public access law – not a confidentiality statute – and its exemptions are not mandatory. Agencies can release records that are exempt when the

agency head determines that disclosure would serve the public interest and no other law, court order, or privilege requires limited access.

For more information on the exceptions in Section 708(b) of the RTKL, you can refer to the OOR's [Right-to-Know Law Case Law Index](#), available on the OOR website.

## 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 may be necessary if you're denied access to records and decide to file an appeal.

The first thing a requester should do to file a RTK request is check with the local or Commonwealth Agency to determine the Agency Open Records Officer (AORO). Each agency is required by law to designate an AORO and make their contact information available on the agency website, if the agency maintains one.

Address your request to the AORO. (Some agencies use the term "Right-to-Know Officer.")

Use the [Standard RTKL Request Form](#) created by the OOR. Every state and local agency in Pennsylvania must accept requests submitted on this form. If an agency has prepared its own RTKL request form, you should consider using that one – it may be better designed to request the specific types of records available from that agency.

Agencies may provide access to records via enhanced electronic access, usually via a website, but any such access must be provided in addition to the access generally required by the RTKL.

[More information is available on the OOR website.](#)

## RTKL Request Timeline

An agency has five business days to respond in writing and within that timeframe it must: (1) grant the request; (2) deny the request, citing the legal basis for the denial or partial denial and explaining the right to appeal; 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. It's important to remember that the clock does not begin to run until the agency open records officer

receives the request, and internal agency processing practices can make that date difficult to determine. Often, submitting the request directly to the agency open records officer via email is the quickest and most verifiable means of determining the time frames under the law.

The 30-calendar day extension is only available under limited circumstances, including: off-site location of records, staffing limitations, a need for legal review or redaction, a complex request, or the requester did not pay applicable fees as required or failed to follow agency policy. If an agency takes the 30-calendar day extension, it must provide, in writing, the reason for the extension, a reasonable date that a response is expected to be provided, and an estimate of applicable fees owed when the record becomes available.

Requesters can allow agencies additional time to respond to requests, but any such agreement must be in writing to preserve the right to appeal.

If an agency doesn't respond to a request in the allotted time, the request is deemed denied – and the requester has the right to file an appeal with the OOR or other applicable administrative appeal officer.

## Filing a Request: Practical Tips

Make your request 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 records. In order to be as specific as possible, it is a good practice to include a date range, a subject matter to provide context, and the scope of the request (e.g. identify a discrete group of records via the type of record or the parties involved).

Requesters are not required to disclose the purpose of a request or intended use of public records and agencies cannot deny access for failure to provide such information. However, communication with an agency can be key to avoiding denials and unnecessary delays, so it is a good practice to be responsive to agencies when they have questions about your request.

Be sure to seek records, not ask questions. Although agencies can answer questions, the law does not expressly require them to do so.

Track all of the dates and deadlines relevant to your request. The deadlines in the RTKL are generally not flexible.

If you grant an extension of time to the agency, do it in writing – and do it before the statutory deadline has passed. Otherwise, you may lose the ability to appeal any denial.

Think twice before requesting a list. If no actual list exists, the agency is not required to create one. So, as an example, instead of requesting a “list of all properties with zoning violations from Jan. 1, 2019, to the present,” you may want to request “Records showing zoning violations issued from Jan. 1, 2019, to the present.” Of course, it’s always valid to add something like, “If this information can be provided in a list, please do.”

## Requesting Information in Databases

More and more information is being stored in databases. Under the RTKL, government records housed in databases are no different than records stored elsewhere.

Importantly, courts have been very clear on that point: Requesting information from a database is no different than requesting a piece of paper, an email, or any other record.

For example, in *Gingrich v. Game Commission*, the Commonwealth Court held: “Providing data from an agency database does not constitute creating a record.” And in *Department of Environmental Protection v. Cole*, the Commonwealth Court held: “An agency can be required to draw information from a database.”

## Redactions

Section 706 of the RTKL governs redactions. Generally, the law requires agencies to redact information, rather than withhold the entire record, when “a public record ... contains information which is subject to access as well as information which is not subject to access.” Further, “[t]he agency may not deny access to the record if the information which is not subject to access is able to be redacted.”

Redactions constitute denials under the RTKL and may be appealed.

## How to File an Appeal

If an agency fails to respond within the timeframe of the law or denies access to a record or a portion of a record, the requester has a right to file an appeal with the OOR or other applicable

administrative appeal officer. The imposition of fees is also appealable, even if a request is otherwise granted.

Most appeals from local and state agencies are filed with the OOR, but not all of them are. The three statewide row officers – Attorney General, Auditor General, and Treasurer – each have their own appeals officer, and local agency denials based on the criminal investigation exemption are decided by an appeals officer appointed by the county District Attorney. Similarly, legislative and judicial agencies have their own administrative appeal officers and do not fall under the jurisdiction of the OOR.

The appeal must be submitted to the OOR or other applicable administrative appeal officer within 15 business days of the mailing date of the Agency’s response or the deemed denial.

By far, the best way to submit an appeal to the OOR is to use [the OOR’s online appeal form](#). The form is designed to make the process of filing an appeal as simple and foolproof as possible. If for some reason you cannot use the online appeal form, appeals should be sent via email ([openrecords@pa.gov](mailto:openrecords@pa.gov)), postal mail (Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234), or fax (717-425-5343).

Appeals should:

- Include a copy of the original Right-to-Know request.
- Include a copy of the agency’s denial letter, if one was sent.
  - *NOTE: If the agency does not respond to the request in writing within five business days, the request is “deemed denied” and can be appealed.*
- Include a copy of any other correspondence with the agency about the request.
- State why you believe the record is a public record. A general statement that the record is public under the RTKL is insufficient. It is advisable to explain why you believe a record documents a transaction or activity of an agency and explain why you believe it was created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.
- 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. Legal argument is not required, but requesters should try to explain why the agency’s reliance on an exemption is misplaced and why a record should be public.

The OOR may be required to dismiss any appeal that does not include the above information.

Once an appeal is received, the appeals officer has 30 days to issue a Final Determination, unless the Requester grants us an extension. If an OOR Appeals Officer asks you for an extension,



please consider granting it. Typically, this is done in cases where the Appeals Officer needs to conduct extensive research, gather additional evidence from the agency, or review records *in camera*.

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

When the appeals officer issues a Final Determination it is binding on the agency and requester. If the agency or the requester wants to appeal the Final Determination, the appeal must be filed with the appropriate court within 30 calendar days of the mailing of the Final Determination. (See “Appealing an OOR Decision to Court” below for additional information.)

NOTE: Appeals which are filed with the OOR by hard copy (i.e., by mail) must be submitted on 8½ x 11 or 8½ x 14 inch paper. Failure to submit hard copy appeals on 8½ x 11 or 8½ 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.

## Fees Under the RTKL

The RTKL requires the OOR to establish a fee schedule and review that schedule every other year. The [complete RTKL Fee Schedule](#) is available on the OOR website and includes far more detail.

Generally, fees may not be imposed for records provided via email or other electronic means. As of December 2020, the fee for records provided on paper (a standard 8 1/2 x 11 black-and-white document) is up to \$0.25 per page for the first 1,000 pages and up to \$0.20 per page for any additional pages.

Other important things to know about fees under the RTKL include:

- Postage fees may not exceed the actual cost of mailing.
- If an Agency offers enhanced electronic access it can establish user fees, but those fees must be reasonable, must be approved by the OOR, and may not be established with the intent or effect of excluding persons from access.

- 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. Staff time fees are also not permitted under the RTKL.
- No fees may be imposed when requesters use their own equipment to make copies such as photographing records.
- An agency may require pre-payment if the fees are expected to exceed \$100.
- An agency may withhold public records if a requester has not paid for previously requested records.

## OOR Mediation Program

The RTKL authorizes the OOR to establish an informal mediation program to resolve RTKL disputes. This is a voluntary process designed to help parties reach a mutually agreeable settlement on records disputes before the OOR. Mediation can save time and expense.

Mediations are conducted by an OOR mediator. Most often, mediation sessions will take place via telephone conference. When convenient to the parties, a mediation session may take place in person. Mediation sessions are not open to the public. All discussions, negotiations and materials created specifically for the mediation process are confidential.

If mediation is successful, the requester will withdraw the appeal once he or she is satisfied with the agency's compliance with the mediated agreement. If mediation is not successful (either party can end mediation at any time), the traditional OOR appeal process will begin.

More [information about mediation](#) is available on the OOR website.

## Appealing an OOR Decision to Court

After the OOR issues a Final Determination, either party may appeal to court. If the case involved a local agency, the appeal would go to the appropriate county Court of Common Pleas. If the case involved a state agency, the appeal would go to the Commonwealth Court. It is advisable to have legal representation when litigating RTKL disputes in the courts.

If an OOR Final Determination is appealed to court, the RTKL requires that the OOR be served notice of the appeal. However, the OOR is not a proper party to any appeal and should not be named as a party.

Requesters can also ask the appropriate court to enforce a Final Determination when an agency fails to comply with an order providing access to records. Requesters seeking to enforce a Final Determination should seek the assistance of counsel and consult the [OOR's Enforcement Guidance](#) for additional information. The OOR does not have the authority to enforce Final Determinations.

## Penalties and Attorneys' Fees

The OOR and other administrative appeals officers do not have the authority to impose fines, fees or other sanctions. Penalties under the RTKL can only be awarded by a court of competent jurisdiction.

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.

## OOR Training

The OOR regularly conducts training on the RTKL and the Sunshine Act for groups that wish to learn about the application of these laws, including both agencies and requesters. In addition, the OOR often partners with various organizations or associations to provide a presenter or panelist.

Many of the OOR's training sessions are presented via webinar over Skype. (You can look at [the OOR Training Calendar here](#).) The webinars can be accessed using Skype for Business or the Skype app, which is easily downloaded at no charge. The sessions consist of a PowerPoint deck with live narration. Participants are able to submit questions using the Skype text chat feature.

The OOR can also use other software platforms such as Zoom and Microsoft Teams. If your group would like to schedule a customized training session, please contact our Director of Outreach and Training at 717-346-9903 or complete the [online Training Request form](#).

## Sunshine Act

The Sunshine Act requires agencies to deliberate and take official action on agency business in an open and public meeting. It requires that meetings have prior notice, and that the public can attend, participate, and comment before an agency takes that official action.

The Sunshine Act applies to any state or local government body and all sub-units appointed by that body that perform an essential government function and exercises authority to take official action or render advice. This can include boards, councils, authorities, commissions, and committees.

The law gives the public the right to comment on issues “that are or may be before the board.” Agencies must provide a reasonable opportunity for residents and/or taxpayers to comment on an issue before a decision takes place.

Members of the public, including the media, can also record any public meeting. Agencies may issue reasonable rules concerning the use of recording devices in order to avoid any disruptions, but those rules cannot be an attempt to prevent a member of the public from recording a meeting.

The OOR has [much more information about the Sunshine Act available on its website](#).