



pennsylvania

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

Right to Know Law and Sunshine Act for Local Government

Phone Number: 717.346.9903

<http://openrecords.pa.gov>

Right-to-Know Law

65 P.S. § §67.101, *et. seq.*

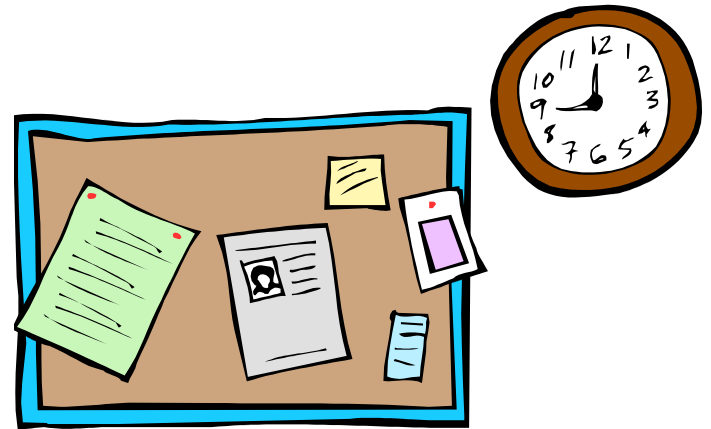
- Effective January 1, 2009
- **Key Changes**
 - **Presumption of Openness:**
 - ***Every*** record of an Agency is ***presumed*** to be Public.
 - Agency bears burden to prove record is not public.
 - **Creation of the Office of Open Records (OOR)**

Agency obligations:

- Must appoint an Agency Open Records Officer (“AORO”).
- May promulgate regulations and policies necessary for the agency to implement the RTKL.
- May create your own Request Form, but must accept the Uniform Request Form developed by the OOR.
- Should provide the OOR with the name and contact information for your AORO

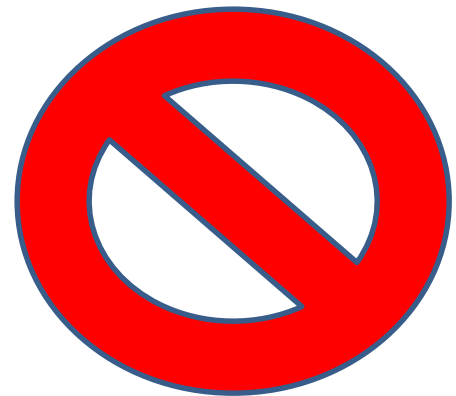
Postings

- On your bulletin boards and if you have a website:
 - **Contact information for the AORO.**
 - Contact information for the applicable appeals office.
 - **A form to file a Request.**
 - Regulations, policies and procedures of the agency related to the RTKL.



Prohibitions – Section 1308

- An agency may not adopt a policy or regulation which:
 1. Limits the number of records which may be requested or made available for inspection or duplication; or
 2. Requires disclosure of the purpose or motive in requesting access to records.



What is a “Good” Request?

- It is addressed to the Open Records Officer
- It seeks a record
- It is Sufficiently Specific

- Definition of a Record:

“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.”

Sufficiently Specific

- **Subject** – must identify a transaction or activity of the agency for which the record is sought
- **Scope** – must identify a discreet group of documents either by type or recipient
- **Timeframe** – needs to be finite

Receiving a Request

- Upon receipt, AORO shall:
 - note the date of receipt on the written request;
 - Compute the date on which the five (5) day initial response period will expire and note that date on the written request; **YOUR BUSINESS DAYS**
 - **Maintain a copy of the Request until it is fulfilled**;
 - If denied, Request must be kept for 30 days or, if appealed, until the OOR issues the Final Determination.

Extensions

- Agencies may unilaterally invoke a **30 Calendar Day Extension** if:
 - It is done within the initial 5 business day window
 - It is done in writing to the requestor
 - A reason is provided consistent with Section 902
 - A date is provided that the requestor can expect a response
 - An estimate of costs is given.
 - **5 + 30 application per Section 902(b)(2)**

Section 708(b) Exemptions

1. Personal security
2. Public safety
3. Infrastructure security
4. Computer security
5. Medical records
6. Personal identification information; home address of law enforcement officer and judge; *does not exempt* name, salary of public employee;
7. Employee records
8. Labor negotiations
9. Draft records
10. Predecisional deliberations and strategy to adopt budget or regulation
11. Trade secrets
12. Personal notes
13. Donor identity
14. Scholarly records
15. Academic transcripts
16. Records related to a criminal investigation

Section 708(b) Exemptions

17. Records related to a noncriminal investigation
18. 911 records
19. DNA and RNA records
20. Autopsy records except name and cause and manner of death
21. Draft meeting minutes (but not audio recordings)
22. Appraisals prior to decision to proceed with project
23. Library and archives
24. Rare documents
25. Archeological site
26. Proposals and bids
27. Correspondence with insurance carrier
28. Social services records
29. Correspondence between an individual and a member of the General Assembly
30. Record identifying the name, home address, date of birth of a minor

The RTKL is not a confidentiality law

- Records can be released outside of the RTKL.
- An agency may exercise its discretion to make any otherwise exempt record accessible if:
 1. Disclosure is not prohibited by Federal or State law or regulation; and
 2. The record is not protected by privilege; and
 3. The agency head determines that public interest favoring access outweighs any interest favoring withholding.
- 4. Is it a **Public Record**? (Exemptions)

Denying Access

- A denial must include:
 - A description of the requested record
 - The legal and factual grounds for denial
 - Name, title, signature, business address and phone number of AORO
 - Date of response
 - The procedure to file an appeal with the applicable appeals office.

Payment Issues

- Agency is only required to provide the record in the current medium
- Cannot charge for electronic records
- **Must allow Requester to use their own equipment to make copies**
- Cannot charge for labor/redaction/legal review
- Can only charge the actual cost/pass-through costs

More Payment Issues !

- No surprises. Contact the requestor with an estimate before the work starts.
- Mutual exchange, **but payment is due first**
- An Agency may require pre-payment if the fees are expected to exceed \$100.
- Hold responses for 60 days before discard if not picked up.
- Denial for non-payment of previous requests

Filing an Appeal

If the agency denies or deem denies a Request, an appeal may be filed within **OOR 15 business days** of the mailing date of the Agency's response or date of the deemed denial (whichever first).

A Complete Appeal...

- Includes the original Request
- Includes the Agency Response, if one is provided
- Includes your statement about why the requested records are public
- Includes a statement addressing any grounds cited by the agency for denying your request

OOOR Docketing Letter



Walter Torain, BN4486
SCI-Mahanoy
301 Morea Road
Frackville, PA 17932

October 25, 2012

Andrew Filkosky
Agency Open Records Officer
PA Dept. of Corrections
1920 Technology Parkway
Mechanicsburg, PA 19120

RE: OFFICIAL NOTICE OF APPEAL - DOCKET # AP 2012-1816

Dear Parties:

Please review the information below carefully as it affects your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.* ("RTKL") on October 25, 2012. The process to follow in submitting information to the OOR is attached. A Final Determination will be issued in 30 calendar days as set forth in the RTKL.

You may submit information and legal argument to support your position by 5:00 p.m. seven (7) business days from the date on this letter. Please include the docket number above on all submissions.

Your position must be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and EOP. Determinations of the OOR. **Statements of fact must be supported by an affidavit made under penalty of perjury by a person with actual knowledge.**

An affidavit is required to demonstrate nonexistence of records.

Any written communication with the OOR must be provided to all parties.

The agency has the burden of demonstrating that records are not subject to public access. Any bases for denial of records not raised in the agency's original response to the request are waived and will not be considered. See *Signature Information Solutions, LLC v. Aston Township*, 995 A.2d 510.

Agency Notification of Third Parties: In the event records requested concern or pertain to an employee of the agency; constitute proprietary, confidential or trademarked records of a third party; or are held by a third party contractor, **the agency must notify such parties of this appeal immediately and provide proof of that notice to the OOR**

Use mailing date of letter to calculate 7 business day submission period.

Affidavit is required to support facts.

Communication to OOR must include the other party.

Provide notice of appeal to relevant third parties.

Final Determinations

- Are issued within 30 days of receipt of an appeal unless Requester agrees to an extension.
- Are legally binding final orders.
- Available for review on OOR website, Lexis, and Westlaw

Judicial Review

- Within thirty (30) days of the mailing date of an OOR Final Determination, any party may file a judicial appeal. 65 P.S. § 67.1302(a).
 - Local agency appeals are to be filed with Court of Common Pleas in the agency's county.
 - Commonwealth agency appeals are to be filed with the Commonwealth Court.
- The OOR must be served notice of the appeal, but the OOR is not a party and should not be named in the caption.



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Erik Arneson, Executive Director

PA Sunshine Act Primer for Government Officials

Phone Number: 717.346.9903

<http://openrecords.pa.gov>

Presented by George Spiess

gespiess@pa.gov

Who is Covered?

- Applies to any state or local government body
- and all *committees*
- that perform an essential government function
- and exercises authority to take official action.
- Making recommendations = official action

Public Notice

- Three days in advance of the first regular meeting of the year, along with all of the remaining meetings
- Printed in a newspaper of general circulation
(websites don't count)
- Posted at the meeting site
- Special meetings = 24 hour notice
- No requirement for cancellations

Public Comment

- Commenters can be limited to residents and taxpayers
- Right to comment on issues that are or may be before the board (before any pertinent votes)
- Board may establish reasonable rules for public comment (time limits, spokespersons, specific v. general)

Executive Sessions

- Can be held before, during, or after an open meeting
- *Complete* reason must be announced during the open meeting (Reading v. Reading Eagle)
- No requirement for minutes
- No official action can be taken during an Executive Session – votes must occur in a public session

Executive Sessions II

Allowable Reasons for Executive Sessions:

- Personnel matters (hiring, firing, discipline)
- Discussing labor negotiations
- Considering purchasing, leasing or selling property
- Consulting with counsel about litigation
- Avoiding violating privilege or confidentiality
- Discussing university admission standards

Miscellaneous

- Must produce meeting minutes recording board attendance and who voted for and against
- No requirement for an agenda
- The public can record public meetings
- Agency recordings and minutes are public records
- Agencies can “cure” violations
- Complaints = public goes to court to enforce
- Fines are paid by the officials, not the agency

Additional Resources

- www.OpenRecords.pa.gov
 - Citizens Guide
 - Agency Guides
 - Final Determinations and Key Court Decisions
- Open Records Officer Guidebook
- On Site Training = RA-DCOORTRAINING@pa.gov
- Twitter Feed = @OpenRecordsPa
- OOR Phone = 717.346.9903