



pennsylvania

OFFICE OF OPEN RECORDS

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RTKL Requester Training

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Right-to-Know Law Basics

All state & local government records **presumed** to be public

- 30 exceptions in the RTKL
 - Fewer apply to financial records & aggregated data
- Exceptions in other laws & regulations
- Attorney-client privilege & other privileges
 - Only if recognized by PA courts; not “self-critical evaluation”
- Records can be made non-public by court order

What is a Record?

A record is...

- “information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency”
- *PA Office of Attorney General v. Philadelphia Inquirer* (No. 2096 C.D. 2014, decided Nov. 19, 2015)

Records Take Many Shapes

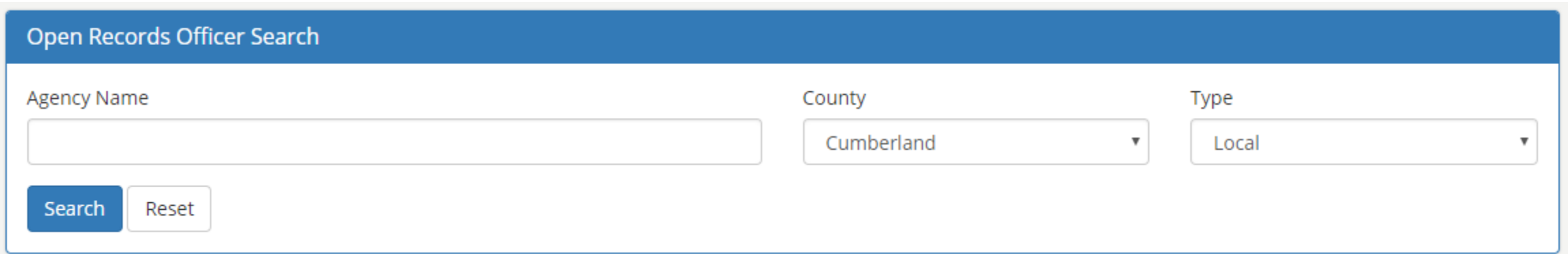
The Right-to-Know Law...

- **Doesn't** distinguish between formats
 - Paper, email, texts, social media, audio, video, etc.
- **Doesn't** distinguish between agency & personal devices (or agency & personal email accounts)
- All that matters: Is it a **record**? And if so, is it a **public record**?

How to File a RTK Request

Submit your RTK request to the **correct agency**

- Submit requests to the agency that has the record (generally not the OOR)
- Address requests to Agency Open Records Officer (AORO)
- AORO database available on OOR website



The screenshot shows a web form titled "Open Records Officer Search". It features three input fields: "Agency Name" (a text box), "County" (a dropdown menu with "Cumberland" selected), and "Type" (a dropdown menu with "Local" selected). Below the input fields are two buttons: a blue "Search" button and a white "Reset" button.

More About Agency AOROs

Many agencies, but not all, have a single AORO

- Commonwealth agencies: DEP, DCNR, DOC, DCED, etc.
- Some agencies have separate AOROs by bureau, dep't, etc.
 - e.g., Philadelphia has approximately 40 AOROs
- Important to send request to the right AORO
 - If not sure, say so: “If this request is misdirected, please let me know as soon as possible so that I can withdraw this request and direct it to the proper AORO.”

How to File a RTK Request

Basic steps include:

- Using the appropriate form to request records
 - Agencies may have their own form, but must accept the OOR's Standard RTK Request Form
- Being **specific** when describing records: subject matter, date range, type of record, etc.
- Making a note of request date to track timing of response

How to File a RTK Request

OOOR Standard RTK Request Form, part 1

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: _____

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): _____

NAME OF REQUESTER : _____

STREET ADDRESS: _____

CITY/STATE/COUNTY/ZIP(Required): _____

TELEPHONE (Optional): _____ EMAIL (optional): _____

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information.
Please use additional sheets if necessary*

How to File a RTK Request

Using the OOR's Standard RTK Request Form, part 2

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? YES NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

Writing a Good RTK Request:

1. Seek Records, Don't Ask Questions

Requests should seek access to records, not ask questions

- RTKL gives access to public records – not a venue for questions
 - Why did the Chairman vote yes?
 - Request meeting minutes & audio recording of meeting
 - Why did Pileggi Lumber get this contract?
 - Request copies of all submitted bids & council emails re: Pileggi Lumber
 - How many times were streets plowed in January?
 - Request plowing schedule & records of any modifications
- Agencies may deny requests which ask questions

Writing a Good RTK Request:

2. Be Specific

Specificity is determined on a case-by-case basis

- Primary goal is to enable agency to know what to look for
- Vast “fishing expeditions” are not permitted
- Phrases like “any and all” & “but not limited to” raise questions
 - “Any and all documents, including but not limited to emails, memos, and spreadsheets, regarding the 2018 Pine Street Bridge Project”
- Poor storage & organization of an agency’s records is not held against the requester

More About Specificity

Specificity is a 3-part test: *Pa. Dep't of Educ. v. Post-Gazette*

- Subject Matter: “Must identify the ‘transaction or activity’ of the agency for which the record is sought”
- Scope: “Must identify a discrete group of documents (e.g., type or recipient)”
- Timeframe: “Should identify a finite period of time for which the records are sought”
 - The most fluid factor – failure to identify a finite timeframe will not automatically render a sufficiently specific request overbroad & a short timeframe will not transform an overbroad request into a specific one

Specificity: Examples

Commonwealth Court cases on specificity:

- *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*: A request seeking all of the emails of Acting Secretary of Education Carolyn Dumaresq as they pertain to the performance of her duties as Acting Secretary since she was appointed on Aug. 25, 2013 to date [Aug. 5, 2014]" was found to be insufficiently specific because "it is, by virtue of the Secretary's position, a request for emails about all of the agency's activity overly nearly a one year period. In other words, it is a fishing expedition"

Specificity: Examples

Commonwealth Court cases on specificity:

- *Dep't of Env'tl. Prot. v. Legere*: A request for 4 years of Section 208 determination letters was sufficiently specific despite the scope of the request because the subject matter was extremely specific
- *Dep't of Corr. v. St. Hilaire*: A request for “all records” documenting inmate injuries or death for five years was sufficiently specific because the request had clear parameters even though a large number of records were implicated

Specificity: Examples

Commonwealth Court cases on specificity:

- *Office of the Governor v. Engelkemier*: Request for all emails from Chief of Staff Katie McGinty from January 2015 to July 2015, with **keywords**, was sufficiently specific – but note discussion about Office waiving specificity argument earlier in the process and potential for “broad” keywords to be insufficiently specific

Writing a Good RTK Request:

3. Think Twice Before Requesting a List

Requesting a “list” can be problematic

- If no actual list exists, agency not required to create one
 - “List of all lawsuits filed against the agency in 2017”
 - “List of all properties with zoning violations, 2015 to present”
- Better to seek records containing the information you want
 - “Records showing captions of lawsuits filed against agency in 2017”
 - “Records showing zoning violations issued, 2015 to present”
- Valid to add: “If info can be provided in a list, please do”

Writing a Good RTK Request:

4. Accessing Information in Databases

Information in databases subject to presumption of openness

- Terminology is vital – try to use agency jargon
 - Create, export, compile, format, CSV, TXT, comma-delimited...
- Database software used by the agency
 - If possible, learn capabilities of program/database – ask if unsure
 - How do agency employees extract info from database
- Where relevant, consider the use of suggested queries
 - Queries may be necessary for extracting information

Databases: Commonwealth Court

Gingrich v. Pennsylvania Game Commission (2012)

- “Requesters may provide suggestions or examples in order to better inform an agency about the information requested, and we have no desire to discourage that practice. ... Providing data from an agency database does not constitute creating a record. ... [I]nformation contained in a database must be accessible to requesters and provided in a format available to the agency.”

Databases: Commonwealth Court

Department of Environmental Protection v. Cole (2012)

- Commonwealth Court: “[A]n agency can be required to draw information from a database, although the information must be drawn in formats available to the agency. In short, to the extent requested information exists in a database, it must be provided ... To hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases.”

Databases: Additional Cases

Intersection of RTKL & databases still being developed

- Agency may be made to **prove query was properly structured**
 - OOR 2017-1761: Violent crime data from Pittsburgh
- Don't be **overly specific** & hurt your request
 - OOR 2016-2041: Sought TXT or CSV, records only exist in PDF
- Law currently only specifies **electronic vs. hard copy**
 - OOR 2017-0246: Sought “comma- or tab-delimited,” provided in PDF

Speaking of Databases...

Two useful resources:

- Online Contract Database, <http://contracts.patresury.gov/>
 - State agency contracts of \$5,000 or more
- PennWATCH, <http://pennwatch.pa.gov/>
 - State employee salaries & compensation
 - State agency employee counts
 - Basic state budget data

Requesting Police Recordings

RTKL does not apply

- Act 22 of 2017 covers **police video & audio recordings**
- Agency has 30 days to respond, may deny for various reasons
- Denials may be appealed within 30 days to court; \$125 fee
- Law enforcement agencies & DAs have fairly broad discretion to release a recording (with or without a written request).
- More info on OOR website

Tip: Communicate with the Agency

Good communication can prevent and solve many issues

- Good practice to let agency know you're willing to talk
- Requesters often submit broad requests to ensure they get all the records they want
 - Understandable, but can be expensive & frustrating
 - Requesters don't want surprise bills
 - Agencies don't want unnecessary work
- Many agencies willing to discuss requests
- If agreement reached on revised request, put it in writing

Tip: Communicate with the Agency

Reason for making RTKL request

- Agency cannot require requester to provide reason for request
- They can ask, but requester can decline to answer
- However, requester may sometimes want to provide info
 - Can help agency understand request & speed response
 - Can help reduce number of valueless records received
 - Can reduce cost if hard copies must be made

Timeline of a RTKL Response

Every state & local agency **must** respond to RTK requests

- Must respond in writing **within 5 (agency) business days**
 - If no response received, request is deemed denied
 - Allow additional 3 business days for postal mail before filing appeal
- Agency can extend timeline by 30 calendar days
 - Any other extension must be agreed to by requester & in writing
- Response: grant, deny, or a mix of both

Agency Response: Extensions

Agencies can invoke a 30-day extension

- Within the initial 5-day window, an agency can invoke a **30 calendar day** extension for reasons listed in RTKL
- If the agency does this, the requester must be notified **in writing**, with a reason and a date to expect a response
- Track all **dates & deadlines** in case you need to appeal

Tracking Dates: An Example

Merlin / Morning Call v. Easton Area SD (2008-1065)

- March 23, 2018 – request made
- March 29, 2018 – agency took 30-day extension (**to May 3**)
 - School had multiple snow days during initial 5 business day window
- May 17, 2018 – agency claimed another 30-day extension
- June 1, 2018 – agency issued response (part grant, part denial)
- June 12, 2018 – requester filed appeal with OOR
- OOR has no choice but to dismiss case as untimely

Agency Response: Costs & Format

OOB fee schedule developed pursuant to RTKL

- No charge for electronic records
 - Redactions may necessitate printing electronic records
- Up to \$0.25/page for hard copies (8.5 x 11)
- Agencies do not have to create a record
- Requesters can photograph records
- Agencies required to provide records in medium requested (electronic vs. hard copy)

Agency Response: Denials

If an agency denies a request, it is required by the RTKL to:

- Provide the denial in writing
- Explain what records are being withheld
- Explain why records are being withheld
- Explain how to appeal the denial
- Failure to respond by the statutory deadline is a “deemed denial” & can be appealed

Appealing a RTKL Denial

Most denials can be appealed to the OOR

- If request is denied, appeal can be filed within 15 business days
- Most appeals filed with the OOR
 - Not Attorney General, Auditor General, Treasurer, General Assembly
 - Not Courts (requests & appeals governed by Rule 509)
 - Denials from **local** agencies based on **criminal investigatory records** appealed to county DA (but PSP denials appealed to OOR)
- Can also appeal redactions (which are denials) & fees

Appealing a RTKL Denial

OOR appeal process designed to be simple

- File appeals using online form at OOR website
 - About 10 to 15 minutes to fill out
- No lawyer necessary
- OOR assigns Appeals Officer to oversee case
- Both sides can present evidence & argument
- OOR has **30 days** to issue Final Determination

Criminal Investigative Records of a Local Law Enforcement Agency

Section 503(d)(2):

- “The district attorney of a county shall designate one or more appeals officers to hear appeals ... relating to access to criminal investigative records in possession of a local agency of that county”
- OOR transfers such cases to the DA
- OOR hears cases involving PSP

OOR – Online Appeal Form

FILE AN APPEAL

Requester

Name:

Address:

Contact:

Agency:

Agency Address:

Agency Contact:

Records Requested:

(Provide as much specific detail as possible so the OOR can identify the information. If you run out of space, you may attach a file with more details.)

OOR – Online Appeal Form

Request Submitted to
Agency Via:

Dates:

Date of Request



Date of Response



Check if no response

Agency Open Records
Officer:

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Additional Reasons for
Appeal:

(If you run out of space, you may attach a file with more details.)

Attach Files:

 Browse ...

+ Add

Remove All

Maximum file attachments: 10

Maximum file size: 10MB

Allowed file types: pdf, doc, docx, rtf, txt, xls, xlsx, jpg, png, gif, tiff

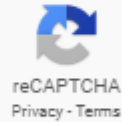
*File names may not contain the following characters: \ / : * ? " < > |*

OOB – Online Appeal Form

- I have attached a copy of my request for records.
- I have attached a copy of all responses from the Agency regarding my request.
- I have attached any letters or notices extending the Agency's time to respond to my request.
- I hereby agree to permit the OOR an additional 30 days to issue a final order.
- I am interested in resolving this issue through OOR mediation. *(This stays the initial OOR deadline for the issuance of a Final Determination. If mediation is unsuccessful, the OOR has 30 days from the conclusion of the mediation process to issue a final determination.)*



I'm not a robot



Submit

Reset

Printable versions of this form (revised January 2016):  

Tip: Consider Requesting Mediation

- RTKL authorizes OOR to establish **informal mediation program**
- Goal: Mutually agreeable settlement
- Voluntary & confidential
- Either side can end mediation at any time
 - If mediation ends, case moves to normal appeal process (new AO)
- OOR has trained mediators
- Can save time & expense

Office of Open Records

Created by RTKL: Independent & quasi-judicial

- Decide appeals filed by people denied access to records
- Provide RTKL & Sunshine Act training
- **18 total staff**
 - Executive Director & Deputy Director
 - 12 Attorneys (incl. 10 Appeals Officers)
 - Chief of Training & Outreach
 - 3 Administrative

OOR Caseload

Thousands of RTK appeals filed every year

- In 2017, OOR heard **2,434 appeals**
 - That's total appeals, not total requests
 - No central database of # of requests
 - LBFC Study (released 2018) estimated 109,000 requests received by state & local agencies, combined, in 2016

OOOR Resources

Website, Twitter, Email Lists & More

- Web: <https://openrecords.pa.gov>
- Blog: <https://openrecordspa.wordpress.com/>
- Email lists: Daily Digest of FDs & General Updates
 - <https://www.openrecords.pa.gov/EmailSubscriptions.cfm>
- Twitter: @OpenRecordsPA
 - Executive Director: @ErikOpenRecords
- YouTube Channel
- Open Records in PA Podcast: Apple Podcasts, Stitcher, etc.