



pennsylvania

OFFICE OF OPEN RECORDS

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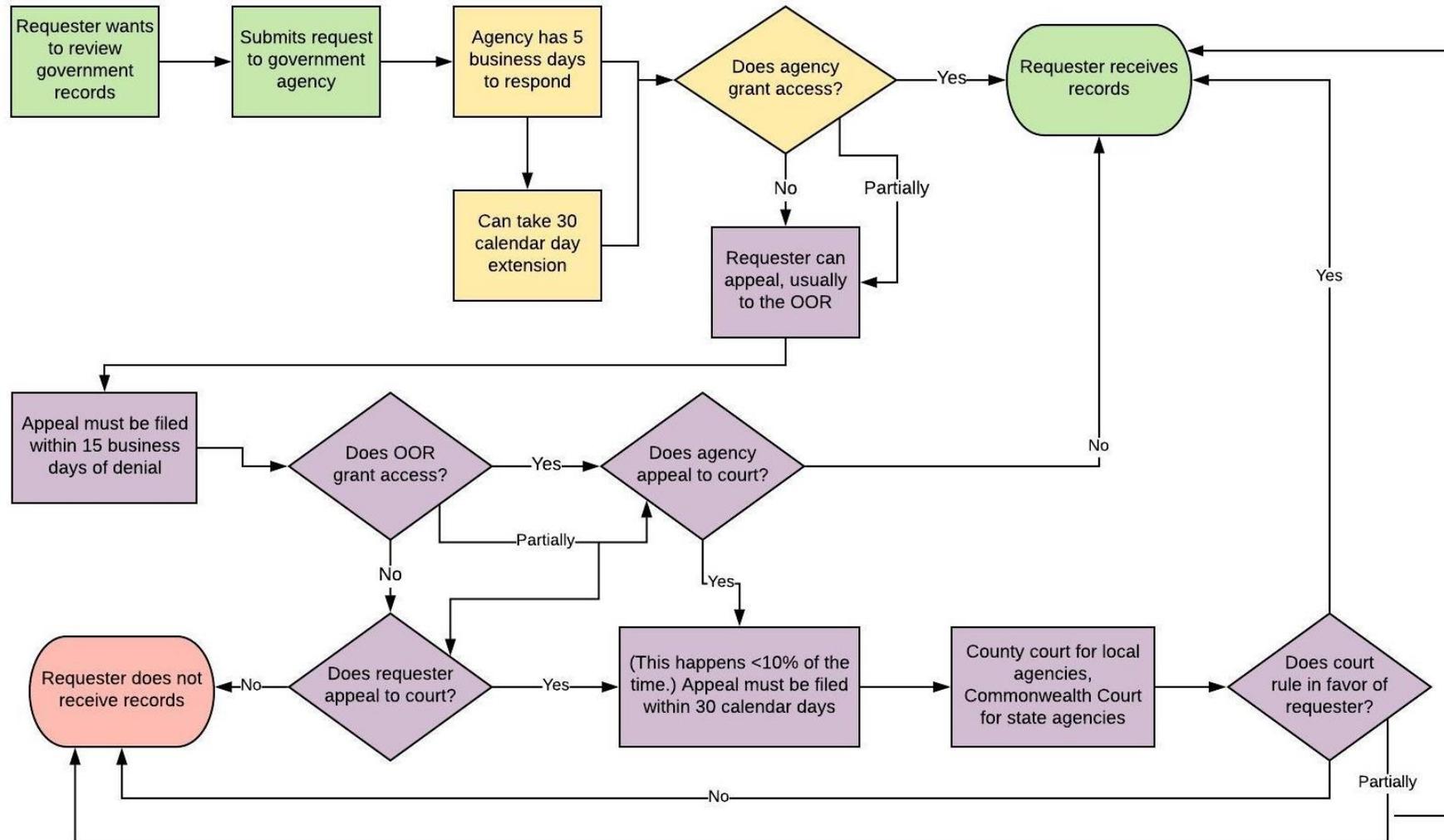
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A Brief History

RTKL introduced 3/29/2007, signed 2/14/2008, eff. 1/1/2009

- Senator Dominic Pileggi, new majority leader – SB 1
- Then-existing RTK Act presumed gov't records were *not* public
 - Requester had to prove public nature & all appeals went to court
 - In practice, basically limited to financial records
- Act 3 of 2008 – complete rewrite, new RTKL
 - Flipped presumption: now gov't records presumed to be public
 - Created independent Office of Open Records (free appeals)

Right-to-Know Law Basics



Which of These are Records?

Which of these do you think are “records” under the RTKL?

1. An agency’s budget for FY 2018-19
2. Inappropriate emails sent to a co-worker on gov’t computer
3. Video recording of a city council meeting
4. Police detective’s interview notes
5. City, county or state proposal to Amazon for HQ2
6. Database of lead tests done by city w/ home addresses

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5. City, county or state proposal to Amazon for HQ2
6. Database of lead tests done by city w/ addresses
 - OOR ordered “100 block of Pine St.” rather than specific addresses

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*
 - Personal communications, even if they violate agency policies, are not “records” under the RTKL

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
 - Other laws also make records expressly public (e.g., Coroner's Act)
- Attorney-client privilege & other privileges
 - Only if recognized by PA courts; not “self-critical evaluation”
- Records can be made non-public by court order

Records Take Many Shapes

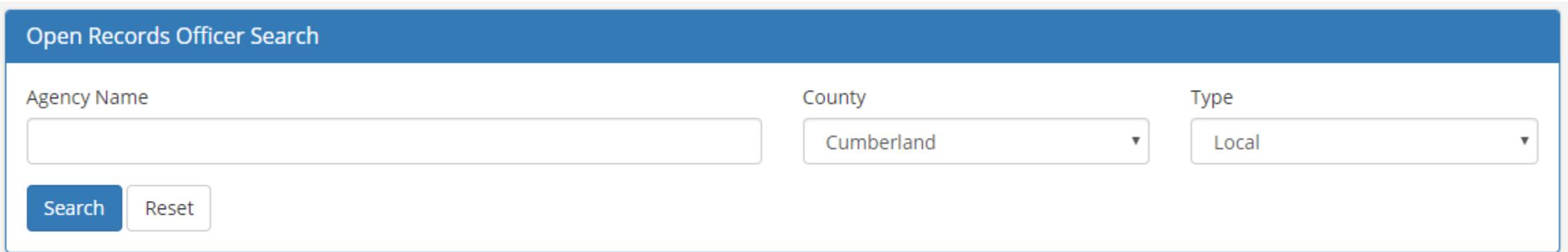
The Right-to-Know Law...

- **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)
 - Practical issues re: accessing personal devices & email
 - Best practice: Agency business done on agency devices & email
- Bottom line: 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.

What is an “Agency”?

RTKL covers state & local agencies, not federal agencies

- State agencies: DEP, DOC, PennDOT, etc.
- Local agencies: cities, boroughs, townships, school districts
- Universities & colleges in Pennsylvania:
 - SSHE = state agencies
 - State-related (Penn State, Temple, Pitt, Lincoln) = hybrid
 - Private = not covered by RTKL other than gov’t contracts

How to File a RTK Request

Basic steps include:

- Use the appropriate form to request records
 - Agencies may have their own form, but must accept OOR's Standard RTKL Request Form
- Be **specific** when describing records: subject matter, date range, type of record, etc.
- Requests can be emailed, mailed, faxed, or hand delivered
- Make a note of request date

How to File a RTK Request

OOR Standard RTK Request Form, part 1



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: _____ (Attn: AORO)

Date of Request: _____ Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: _____ Company (if applicable): _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Email: _____

Telephone: _____ Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

How to File a RTK Request

OOR Standard RTK Request Form, part 2

DO YOU WANT COPIES? Yes, electronic copies preferred if available
 Yes, printed copies preferred
 No, in-person inspection of records preferred (*may request copies later*)

Do you want [certified copies](#)? Yes (*may be subject to additional costs*) No
RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.
Please notify me if fees associated with this request will be more than \$100 (or) \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$_____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Nov. 5, 2018

Writing a Good RTK Request:

1. Seek Records, Don't Ask Questions

Requests should seek access to records, not ask questions

- Agencies may deny requests which ask questions
- Why did the Chairman vote yes?
 - Request meeting minutes & audio recording of meeting
- Why did Acme Lumber get this contract?
 - Request copies of submitted bids & council emails re: Acme Lumber
- How many times was Pine Street plowed in January?
 - Request plowing schedule & records of any modifications

Writing a Good RTK Request:

2. Be Specific

Specificity is determined on a case-by-case basis

- Primary goal: Enable agency to know what to look for
- Vast “fishing expeditions” not permitted (hook vs. net)
- 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”

More About Specificity

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

- Subject: “The ‘transaction or activity’ of the agency for which the record is sought”
- Scope: “A discrete group of documents (e.g., type or recipient)”
- Timeframe: “A finite period of time”

Specificity: Examples

Commonwealth Court cases on specificity:

- *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*
 - Can **not** seek **all emails** of a public employee **over 1 year**
- *Dep't of Env'tl. Prot. v. Legere:*
 - Seeking **4 years** of “Section 208” letters **is allowed**
 - Agency’s organizational decisions not held against requester
- *Dep't of Corr. v. St. Hilaire:*
 - “All records” for **5 years** documenting injuries & deaths **is allowed**

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”
- Better to seek records containing the information you want
 - “Records showing captions of lawsuits filed against agency in 2017”
- Valid to add: “If info can be provided in a list, that’s preferred”

Writing a Good RTK Request:

4. Accessing Information in Databases

Information in databases subject to presumption of openness

- If possible, know what **format** the database can export to
 - Seeking a specific, but incorrect format, can lead to a denial
- When relevant, consider using suggested queries
 - Queries may be necessary for extracting information
- Terminology is important – try to use agency jargon

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 to police recordings

- 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](#)

Seeking Records from SSHE

Post-Gazette v. California University of Pennsylvania (Commonwealth Court, 2017)

- Sought records re: partial collapse of parking garage
- Agency claimed non-criminal investigation, other exemptions
- OOR granted appeal
- Court affirmed, but remanded attorney-client claims to OOR
 - “Having the authority to inspect and maintain the facilities is not tantamount to having the authority to conduct a ‘non-criminal investigation’ under the RTKL”

Seeking Records from SSHE

APSCUF v. SSHE

(Commonwealth Court, 2016)

- Sought comprehensive budget data from all SSHE universities
- OOR granted appeal
- Court upheld OOR, but discussed voluminous nature
- Gives OOR some discretion to give additional time to an agency to gather & review documents when the agency justifies lack of time due to the volume requested

Seeking Records from SSHE

Post-Gazette v. West Chester University (Commonwealth Court, 2015)

- Sought records re: WCU's proposed separation from SSHE
 - Amount paid by WCU Foundation to a lobbying firm, contract w/ firm
- OOR granted appeal
- Court affirmed, in large part, decision of the OOR
- The decision to hire the firm was made “because the WCU President ‘was absolutely in support of the idea of breaking away from [SSHE]’”

Seeking Records from SSHE

Pocono Record v. East Stroudsburg University Foundation (Commonwealth Court, 2010)

- Sought donation info & minutes of Foundation meetings
- OOR granted donation info (w/ redactions), denied minutes
- Court affirmed on donation info, granted minutes relating to management of funds raised for the university
- Basic holding: the Foundation carries out the governmental function of fundraising on the University's behalf

Seeking Records from SSHE

Folletti v. Edinboro University (Commonwealth Court, 2011)

- Request sought records re: construction of student housing
- OOR granted appeal
- Court upheld OOR
- Language in the contract between Edinboro & its Foundation granted University “considerable control over the entire project” and eventually makes it the owner of the building

Tip: Communicate with the Agency

Good communication can **prevent & solve many issues**

- Good practice to let agency know you're willing to talk
- Requesters often submit broad requests
 - Understandable, but can be expensive & frustrating for both sides
- If agreement reached on revised request, put it in writing
- Agency cannot require requester to provide reason for request
 - They can ask, but requester can decline to answer
 - Requester may sometimes want to provide info

Timeline of a RTKL Response

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

- Must respond in writing **within 5 (agency) business days**
 - If no response received, request is deemed denied
- Agency can extend timeline by 30 calendar days
 - Any other extension must be agreed to by requester & **in writing**
 - Be cautious with “**rolling production schedules**”
- **Track all dates & deadlines** in case you need to appeal
- Agency response: grant, deny, or a mix of both

Agency Response: Costs & Format

OOB fee schedule developed pursuant to RTKL

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

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

How to Appeal 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

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

Cost of the RTKL

Legislative Budget & Finance Committee:

- Study released in 2018 (data covering calendar year 2016)
- 54% of agencies reported **\$500 or less annual cost**
 - 92% of agencies reported \$10,000 or less
- Total cost (all agencies, 2016) ~ \$5.7 million to \$9.7 million
 - Median cost = \$500
 - > 6,000 agencies, so avg. cost = \$950 to \$1,617 per agency

Potential Amendments to the RTKL

SB 465 & SB 466 (Blake), also numerous other bills

- Many potential amendments generally agreed to
- Inmate requests limited to certain categories of records
- New fees for commercial requests (excludes media)
- State-related universities put much more budget info online
- Campus police department = local agency
- Courts can fine agencies \$500/day for ignoring an OOR order

OOOR Resources

Website, Twitter, Email Lists & More

- Web: <https://openrecords.pa.gov>
- Blog: <https://openrecordspennsylvania.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.