



**pennsylvania**

OFFICE OF OPEN RECORDS

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# Right-to-Know Law Basics

## What is Pennsylvania's Right-to-Know Law?

- Governs access to most (but not all) state & local records in PA
- Processes to request records & to appeal denied requests
- **Senate Bill 1 of 2007-08 session; Act 3 of 2008**
  - Introduced by Senator Dominic Pileggi, new Majority Leader
- Signed by Gov. Ed Rendell
- Went into full effect on Jan. 1, 2009

# Right-to-Know Law Basics

## Goal: Make accessing gov't records simple for average citizens

- Fill out a standard request form – all agencies must accept it
- Agencies must respond within 5 business days
  - Can take a 30 calendar day extension for various reasons
- If request is denied, appeal to **Office of Open Records**
  - Fill out an online form (10 to 15 minutes)
  - Free, no lawyer necessary
  - OOR issues decisions in 30 calendar days

# Office of Open Records

## Created by RTKL: Independent & quasi-judicial

- Decide appeals filed by people denied access to records
- Provide RTKL & Sunshine Act training
- **20 total staff**
  - Executive Director & Deputy Director
  - 13 Attorneys (incl. 11 Appeals Officers)
  - Chief of Training & Outreach
  - 4 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

# Right-to-Know Law Basics

## Two-part test: Is it a record? If so, is it a public record?

- All state & local gov't records **presumed to be public**
  - Agency bears burden of proof when withholding a record
- 30 exceptions in the RTKL can make a record non-public
  - Fewer apply to financial records & aggregated data
- Exceptions in other laws & regulations
- Attorney-client privilege & other privileges
- 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...

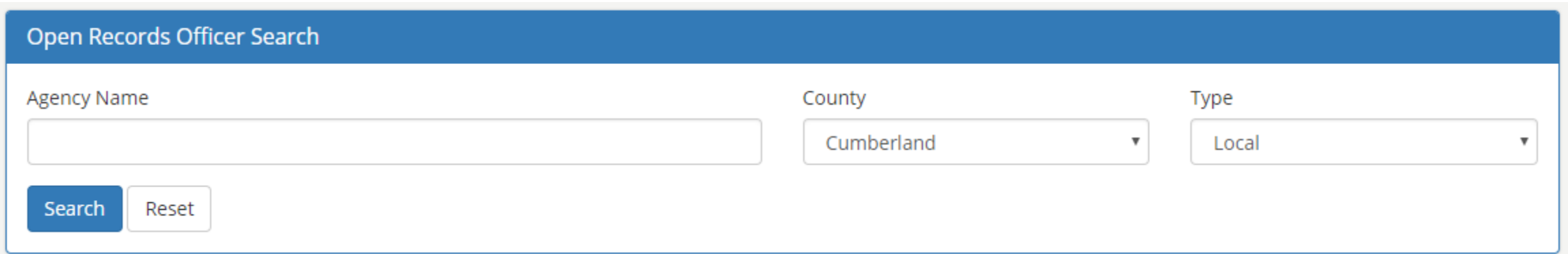
- **Doesn't** distinguish between formats
  - Paper, email, texts, social media, audio, video, etc.
- **Doesn't** distinguish between agency & personal devices (or agency & personal email accounts)
- All that matters: Is it a **record**? And if so, is it a **public record**?



# How to File a RTK Request

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

- Submit requests to the agency that has the record
  - Approx. 6,000 agencies across the state
- 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 Records Can You Get?

## 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 on the lumber contract?
    - 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
- Agencies may deny requests which ask questions

# What Records Can You Get?

## Commonwealth Court cases regarding specificity of requests:

- *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”

# What Records Can You Get?

## Commonwealth Court cases regarding specificity of requests:

- *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

# What Records Can You Get?

## Information (i.e., records) contained in databases

- *Gingrich v. Pennsylvania Game Commission*: “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.”

# Speaking of Databases...

## Two useful resources:

- **State 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

# What Records Can You Get?

## More real-life examples

- Nearly **\$8 million** paid to settle at least 18 sexual harassment, misconduct and discrimination lawsuits against State Police troopers since 2001
- Communications and documents related to the **partial collapse of a parking garage** at a state-owned university
- A recommendation, which was never implemented, to **install flashing lights at a railroad crossing** where a woman was subsequently killed

# What Records Can You Get?

## Even more real-life examples

- **\$175,000** paid to settle a lawsuit filed against a police officer accused of coercing a confession from a 14-year-old boy
- Documents showing that a PPL executive called the company's storm room to ask about an outage in his neighborhood, leading to a **delay in service restoration** for other customers
- **Training records** for a police officer charged (and later acquitted) in a fatal shooting



# Police Departments & Police-Related Records

## Fairly broad exception for **criminal investigative records**

- Police departments can withhold records “relating to or resulting in a criminal investigation” (Section 708(b)(16))
- Does not apply to blotter information
  - “a chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses”
- Does not apply to aggregated data (e.g., crime statistics)
- Does not apply (mostly) to financial records (can be redacted)

# Police Departments & Police-Related Records

## More police-related records

- 911 recordings: Released at agency (911 call center) discretion
- Coroner records: Covered by Coroner's Act
- Pennsylvania Uniform Crime Reporting (UCR) System
  - Includes monthly summary arrest reports

# Police Recordings: Video & Audio

## RTKL does not apply to police recordings

- Act 22 of 2017 covers **police video & audio recordings**
- Must make request within 60 days of recording
- 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)
- Bodycam & dashcam policies are explicitly public
- More [info on OOR website](#)

# Court Records

## RTKL does not apply to records of judicial agencies

- Judges, Prothonotaries, Clerks of Courts, etc.
- **Access to most court records covered by common law**
- Unified Judicial System has a [public records section](#) on website
- [Rule 509](#) covers access to financial records of judicial agencies

# Communicating with the Agency

## Good communication can prevent misunderstandings

- Requesters & agencies **sometimes speak different languages**
- 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

# 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** they asked to inspect
- Agencies required to provide records in medium requested (electronic vs. hard copy)

# 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 Judicial Agencies (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

# Tip: Consider Requesting Mediation

## OOR has a mediation program to help resolve appeals

- 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



# 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.