



**pennsylvania**

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

## **PSAECO – District Attorneys**

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<https://openrecords.pa.gov>

[@ErikOpenRecords](#)

[@OpenRecordsPA](#)

[earneson@pa.gov](mailto:earneson@pa.gov)

(717) 346-9903

# Introduction

## RTKL treatment of law enforcement records

- RTKL seeks to balance public accountability with the need for investigative confidentiality to achieve public safety
- There will inevitably be some tension in trying to reach the appropriate balance

# District Attorneys & the RTKL

## Criminal investigative records under the RTKL

- Section 708(b)(16) – criminal investigative exemption
  - Allows an agency to withhold various records “relating to or resulting in a criminal investigation” including complaints of potential criminal conduct, investigative materials, the identity of confidential sources, victim information, etc.
  - Not exempt: Blotter Information
  - Not exempt: Private Criminal Complaints

# District Attorneys & the RTKL

## Designating an appeals officer - Section 503(d)(2)

- District Attorney “shall designate one or more appeals officers” to hear RTKL appeals
  - This is in addition to the Agency Open Records Officer who handles RTKL requests (a function some DAs delegate to the county)
  - OOR has jurisdiction over other records in the possession of a local law enforcement agency
- DA hears appeals regarding “access to criminal investigative records in possession of a local agency of that county”

# RTKL Cases Involving Local Law Enforcement

## Sequence of events involving local law enforcement records

- Request to local PD seeks criminal investigative records
- Agency denies request
- Denial should tell requester to appeal to DA
- However, if other records and/or exemptions are also at issue, the denial should also tell the requester to appeal to OOR
  - *Sometimes, OOR & DA each have jurisdiction over a portion of an appeal*

# RTKL Cases Involving Local Law Enforcement

## If an appeal is filed with the wrong office (OOR vs. DA)

- OOR regularly receives appeals that should go to DA
- When it's clear the appeal should have been filed with the DA, OOR transfers the appeal immediately
- When the nature of the records is unclear, OOR first seeks evidence from agency to confirm the records relate to a criminal investigation
  - Low threshold that must be met

## **Example: Nature of Records Unclear**

### **OOR needs some evidence to transfer case to DA, e.g.:**

- Lt. Smith: “I attest that a good faith search was conducted and the only records responsive to the request are an investigative report and investigative notes. Police were dispatched to investigate an incident that took place in the borough on July 1, 2019. The incident was investigated by Officer Jones, and the investigation is ongoing. Officer Jones prepared the responsive records.”
- Sample affidavits available on OOR website

# RTKL Cases Involving Local Law Enforcement

## When a DA's Appeals Officer receives a transfer from OOR

- Appeal is timely filed if it was timely filed before OOR
- DA has 30 days to issue a Final Determination
  - From date of receipt of the transfer
  - Can seek additional time from the requester



## **Mixed Appeals – DA and OOR**

### **When OOR & DA each have jurisdiction over part of an appeal**

- Request involves both criminal & noncriminal investigative records or even non-investigative records
- OOR collects evidence from the agency & reviews the appeal with respect to the records over which it has jurisdiction
- When OOR issues its FD, it transfers the portion of the appeal that relates to criminal records to the DA

# Appeals for DA Investigative Records

## When DA receives an appeal re: its own investigative records

- When the request involves criminal investigative records, DA has jurisdiction over its own appeals
  - OOR, Attorney General, Auditor General, State Treasurer
- Best practice:
  - One person as AORO, with one alternate/backup (post on webpage)
  - One attorney to represent DA if an appeal should be filed
  - One attorney to be Appeals Officer – hear the appeal & issue FD

# OOR Goals

## OOR docket about 2,500 appeals every year

- Process appeals efficiently
- Resolve appeals quickly
- Get all appeals to the AO with jurisdiction
- Make the process as easy as possible for District Attorneys
  - Call OOR any time to ask procedural questions (717-346-9903)
  - OOR can provide on-site training for AOROs & others

# 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.