



# pennsylvania

OFFICE OF OPEN RECORDS

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# Accessing Government Records

## What kind of records do you want?

- Federal Government: [Freedom of Information Act \(FOIA\)](#)
- Judicial Records: [Common Law, PA Supreme Court Rule 509](#)
- State & Local Records: [Right-to-Know Law](#)
- *Of course, always search online first...*

# A Brief History of the RTKL

## 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)

# **What Records Should be Available?**

**Should this be available under the RTKL?**

An agency's budget for FY 2018-19

# What Records Should be Available?

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An agency's budget for FY 2018-19 – IT IS AVAILABLE

*Financial records are the most public of all government records*

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Should this be available under the RTKL?

Video recording of a city council meeting

# What Records Should be Available?

## Should this be available under the RTKL?

Video recording of a city council meeting – **IT IS AVAILABLE**

*Agency boards, such as city councils, can meet in private (“executive session”) for certain reasons specified in law*

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Police detective's interview notes



# What Records Should be Available?

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Police detective's interview notes – **NOT AVAILABLE**

*RTKL includes an exemption for criminal investigative records*

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County proposal to Amazon for HQ2

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County proposal to Amazon for HQ2 – IT IS AVAILABLE

*Agencies cannot claim the RTKL's "trade secrets" exemption*

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Database of lead tests done by city w/ home addresses

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Database of lead tests done by city w/ home addresses

IT IS AVAILABLE, but with limits

*Block-level data (e.g., “100 block of Pine Street”)*

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## Should this be available under the RTKL?

Inappropriate emails sent by a gov't employee to a co-worker on gov't computer, during work hours

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## Should this be available under the RTKL?

Inappropriate emails sent by a gov't employee to a co-worker on gov't computer, during work hours – **NOT AVAILABLE**

*Let's discuss the RTKL's definition of a "record"...*

# Fundamental Question: 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

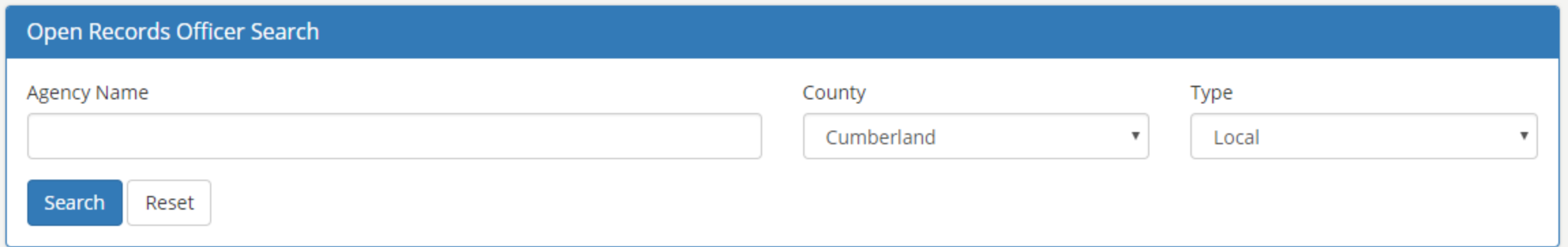
All state & local government records **presumed** to be **public**

- 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

# How to File a RTK Request

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

- State agencies: DEP, DOC, PennDOT, etc.
- Local agencies: Cities, boroughs, townships, school districts
- 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.

# How to File a RTK Request

## Basic steps include:

- Use the appropriate form
  - All agencies must accept OOR's [Standard RTKL Request Form](#)
  - Agencies may have their own form, you can choose to use that one
- Be **specific** (but not *too specific*) when describing records
- Make a note of request date
  - Very important if you need to appeal

# Writing a Good RTK Request

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

- **Subject Matter:** Identify 'transaction or activity' of the agency
- **Scope:** Identify discrete group of docs (e.g., type or recipient)
- **Timeframe:** Identify a finite period of time
  - This is the most fluid factor – failure to identify a finite timeframe will not automatically render a request overbroad & a short timeframe will not make an overbroad request specific
  - Timeframe can be implied (e.g., “the ongoing Pine Street repaving”)

# 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**

# Requesting Police Recordings

## RTKL does not apply to police recordings

- Act 22 of 2017 covers **police video & audio recordings**
- Must request recording within 60 days of its creation
- 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](#)

# Requesting Information In Databases

## Information in databases subject to presumption of openness

- Commonwealth Court has ruled, repeatedly, that agencies must provide non-exempt data from databases
- Learn about the database software used by the agency
  - If possible, learn capabilities of program/database – ask if unsure
  - How do agency employees extract info from database
- Terminology can be important – use agency jargon if possible
  - Create, export, compile, format, CSV, TXT, comma-delimited...

# 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 names, titles, salaries & compensation
  - State agency employee counts
  - Some very basic state budget data



# Questions

## Thank you for all the great questions

- Feel free to contact me with any additional questions
  - [earneson@pa.gov](mailto:earneson@pa.gov)
  - [@ErikOpenRecords](https://twitter.com/ErikOpenRecords) on Twitter
  - 717-346-9903
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