



pennsylvania

OFFICE OF OPEN RECORDS

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OOR Draft Regulations

RTKL authorizes OOR to develop regulations

- Section 504(a): “... The Office of Open Records may promulgate regulations relating to appeals involving a Commonwealth agency or local agency.”
- Procedural Guidelines (revised Sept. 2015) available on OOR website. Form the basis for much of the OOR’s draft regulations.

OOR Draft Regulations

Draft regulations being developed

- Shared a draft of OOR regulations with a group of stakeholders for informal comments.
- Comments will be reviewed, changes will be made to the draft, and then the more formal IRRC process will begin.
- **IRRC process allows ample opportunity for public review and comment.**

OOR Draft Regulations

Constitutional right to privacy

- *PSEA v. OOR.*, 148 A.3d 142 (Pa. 2016).
- Agency provides general notice.
- Agency determines if request includes “personal information in which there is a reasonable expectation of privacy.”
 - Does not include records that are public in nature by law, regulation, ordinance, etc.

OOR Draft Regulations

Constitutional right to privacy

- Balancing test: Does public interest outweigh privacy interest?
 - Done by agency at request stage, done by OOR at appeal stage.
- Redaction is a possibility.

OOR Draft Regulations

Commercial requests

- RTKL Section 1307 allows OOR to establish duplication fees “for Commonwealth agencies and local agencies.”
- Draft regulations clarify that this authority includes ability to establish a separate fee schedule for commercial requests.

OOR Draft Regulations

Preserving records during RTK process

- Would require agencies to maintain all records reasonably responsive to a request until 60 days after the last appeal period expires.
- Under RTKL, courts can fine agencies for denying access to public records in bad faith.

OOR Draft Regulations

Miscellaneous provisions

- Establishes clear process for accessing the OOR's appeal (quasi-judicial) files. Patterned after similar provisions promulgated by the Supreme Court.
- Clarifies process for participation in an appeal as a direct interest participant.

OOR Draft Regulations

More miscellaneous provisions

- Provides OOR Appeals Officers with limited flexibility in extending certain deadlines.
- Defines “time response log” and clarifies that information in that definition does not meet “reasonable expectation of privacy” standard.

OOR Draft Regulations

Some language borrowed from SB 465

- Some of the provisions in the regulations use language identical to, or very similar to, that contained in Senate Bill 465.

Senate Bill 465

Similar to last session's SB 411, but w/ changes

- Adds “campus police” at state-owned and state-related universities to list of agencies.
- Commercial requests.
- Inmate requests.
- “Final safety inspection reports” not covered by 708(b)(17).
- Courts may impose \$500/day fine for ignoring a Final Determination from OOR.

Senate Bill 465

Additional provisions in SB 465

- Prohibits destruction of records at issue in a RTK request; courts may fine \$10,000 for violation.
- Requires AOROs to register with OOR.
- Clarifies that vol. fire cos. are not agencies.
- Clarifies protection of certain personal financial information; protection not applicable to aggregated data.

Senate Bill 465

Additional provisions

- Numerous procedural improvements.
- Attempting to further simplify appeals.
- Allows OOR to stay proceedings if a substantially similar case is pending in court.

Senate Bill 465

Additional provisions

- Clarifies OOR in-camera power.
- Clarifies transfer of cases (e.g., to row offices).
- Clarifies public nature of records expressly made public under any other law.



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THANK YOU

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