

RIGHT-TO-KNOW LAW:

YOUR DUTIES, COMMON ISSUES, AND
PRACTICAL POINTERS –
SOLICITOR AND OOR PERSPECTIVE

10/20/17

OFFICE OF OPEN RECORDS:

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BACKGROUND HISTORY

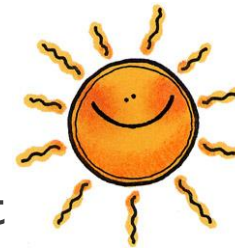
- Original law adopted in 1957
- New RTK Law (Act 3 of 2008) – Major Change
- Pros and cons
- Some unintended consequences



RIGHT-TO-KNOW LAW BASICS

Key elements of the RTKL:

- Starting point – government records presumed to be open
- If school district wants to withhold a record, **it bears burden** of proving it's not public
- Office of Open Record (OOR)
 - Decides RTKL appeals for most agencies
 - Provides training on RTKL & Sunshine Act



RIGHT-TO-KNOW LAW BASICS

Government records presumed to be public

- But 30 exceptions – public policy reasons
- Exceptions also in other laws and regulations
- Attorney-client and other privileges
 - Only those recognized by Pennsylvania courts
- 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”
- “Documents a transaction or activity of an agency” – key language and concept – more later



RECORDS TAKE MANY SHAPES

- A record may be a hard copy document, letter, map, book, tape, photo, film, sound recording, email, text message, Twitter, Facebook, other electronically-stored information, etc.
– more later



RECORDS TAKE MANY SHAPES

The Right-to-Know Law ...

- **Doesn't** distinguish between school district devices and personal devices
- It **only cares** if the document / email / whatever is a “**record**” – and then if that record is a “**public record**” – which might depend on whether the record qualifies for an “**exception**” from mandated access



WHO MUST RESPOND TO REQUESTS

Every government agency must respond to RTK requests

- District must have an Open Records Officer (ORO)
- Should have policy – see PSBA Policy 801
- Request must be in writing
- **Must respond within 5 (school district) business days**
 - Response must be in writing – and identify requester
- Can extend final response by 30 calendar days
- Reponse: grant, deny, or a mix of both



OPEN RECORDS OFFICER RESPONSIBILITIES

ORO responsibilities include:

- Post contact information
- Receive and process RTK requests
 - All staff should forward RTK requests to ORO
- Gather and review responsive records
- Issue responses to RTK requests
- Track all dates and deadlines



PROCEDURE

- Some responses easy; no search required:
 - Request for Superintendent contract or employee resignation agreement – clearly must provide
 - Request for records relating to specific student under 18 – clearly an exception
- Many responses difficult; require search and analysis:
 - Request for all records from 01/01/17 relating to high school volleyball
- For some requests, review of emails can literally take several days
- Different from litigation discovery, no balancing benefit vs. burden – under RTKL, request purpose and time, expense, or burden of search, analysis, redaction, and response – **IRRELEVANT**



SEARCH FOR RESPONSIVE RECORDS

If search required, ORO must:

- Make a “good faith effort to search [district] records”
- Records that exist on date of request
- Search records within control of district employees – and possibly school board members or independent contractors
- As to records in control of employees:
 - Search “hard copy” records if relevant
 - Technology group search server for emails – using appropriate search words
 - If known or plausible that employees have responsive records not on district computer system – such as hard copy, email, or text – ORO ask relevant employees to provide any such responsive records



SEARCH FOR RESPONSIVE RECORDS

- If plausible that school board members have records not within control of or accessible by district employees, and responsive to the request, ORO should ask school board members to provide any responsive records for review
 - For example, emails in personal email accounts or texts that are responsive records – such as emails relating to high school volleyball
 - If this circumstance occurs, normal procedure is for ORO to send email to all school board members explaining RTK request and asking board members to provide responsive records for review
 - The ORO communication to board members must be adapted to the facts relating to the request – and might require solicitor input concerning whether a board member inquiry is required, and if so how to word the inquiry



SEARCH FOR RESPONSIVE RECORDS

- This does not mean every board member email or text in any way relating to the district and the subject matter request will be a responsive record
- To be a responsive record, the email must: (1) be within the scope of the RTK request; (2) “document a transaction or activity” of the district; (3) not be exempt – again, more later



NOTICE TO AFFECTED INDIVIDUALS

- If the request seeks records about specific individuals, such as district employees, and the ORO believes the record might be subject to disclosure, the ORO should notify the affected person and allow the person to raise concerns about the planned response
- For example:
 - Recent request for school board member Ethics Act Statements of Financial Interest (but note public nature of SFIs)
 - Request for communications by named employees or board members
 - Request for copy of employee employment application
- Whether to give notice often a “judgment call”



DISTRICT RESPONSE: FEES AND COSTS

OOB required to issue a fee schedule

- Up to \$0.25/page for hard copies
- No charge for electronic records
 - *Redacted records may be at \$0.25/page rate*
- No charge for labor, including redaction
- Requesters can photograph records
- Fee schedule available on OOB website



DISTRICT RESPONSE: ARE YOU REQUIRED TO SEND BY EMAIL?

- OOR view is that requesters have a right to have documents mailed or emailed to them as requested – *if the documents exist in the requested medium (Section 701(a))*
- PSBA disagrees with this conclusion – believes RTKL is an “access” law – simply requiring that documents be made available for pick-up at the district office
- RTKL authorizes the district to grant a request by notifying the requester that a record is available on the district’s website



DISTRICT RESPONSE: DENIALS

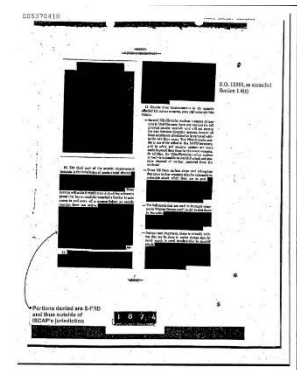
If district denies a request, it must:

- Provide the denial in writing
- Explain what type of records, if any, are being withheld (need not describe specific records – but OOR might require on appeal)
- Explain why records are being withheld (including citation of legal authority)
- Explain how to appeal the denial to OOR
- Failure to respond by the statutory deadline is a “deemed denial” and can be appealed



DISTRICT RESPONSE: REDACTION

- When an otherwise public record contains non-public information, the proper procedure is to redact the non-public information
- Because redaction is a form of denial, the district must state the basis on which the information is redacted



RTKL IS NOT A CONFIDENTIALITY LAW

RTKL does not prohibit release of exempt records

- The district may exercise its discretion to make an otherwise exempt record accessible if **all** of the following apply:
 - Disclosure is not prohibited by federal or state law or regulations
 - The record is not protected by privilege
 - The district determines that public interest favoring access outweighs any interest favoring denial



THIRD-PARTY RECORDS

Records submitted to the district by third parties go through the same tests

- Information submitted to the district by a third-party contractor also **presumed to be public**
- Common exception that may apply:
 - (b)(26): financial information of a bidder



THIRD-PARTY CONTRACTOR RECORDS

Some third-party records NOT submitted to the district may still be public

- Section 506(d): “A public record ... in the possession of a party with whom the agency has contracted to perform a governmental function ... and which directly relates to the governmental function and is not exempt ... shall be considered a public record of the agency for purposes of this act.”
- For example, an independent contractor retained to provide some type of student instruction



REQUESTS FOR TRADE SECRETS

Contractors are required to give the district notice that information submitted includes a trade secret

- Section 707(b): “An agency shall notify a third party of a request for a record **IF** the third party provided the record **AND** included a written statement ... that the record contains a trade secret or confidential proprietary information.”



COMMON PITFALLS PER OFFICE OF OPEN RECORDS

- Districts should give OOR up-to-date ORO information; this is used to send appeal packets
- Don't be afraid to contact a requester to seek:
 - Clarification on a confusing request; or
 - An extension for big requests
- Use the OOR's mediation program



SPECIFICITY REQUIREMENT

- Request must “describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested....” **65 P.S. § 67.703**
- 3-part balancing test to determine if request sufficiently specific:
 - Subject matter must identify the transaction or activity of the district for which record is sought
 - The request must identify a discrete group of documents, such as type of document or district employee who received the document
 - The time frame of the request must be a finite period of time



SPECIFICITY REQUIREMENT

- *ABC 27 News v. Manheim Township School District*
(Docket # AP 2017-0269) – OOR ruled 4-year time period insufficiently specific
- *Kmetz v. Greater Johnstown School District* (Docket # AP 2016-1489) – OOR ruled 18-month time period insufficiently specific
- No time period identified – obviously insufficiently specific – *unless the activity implies a time period (e.g., records about cost of a new soccer field)*



SOLICITOR POINTERS ON RESPONSE

- Goals:
 - Comply with RTKL and other laws
 - Satisfy resident and taxpayer reasonable information requests
 - Minimize time, burden, and expense of search, analysis, and response
 - Protect rights of individuals or entities potentially adversely impacted by response
 - Fulfill public policy purposes underlying exceptions
 - Avoid unnecessary appeals or controversy



SOLICITOR POINTERS ON RESPONSE

- Be practical:
 - If quicker to **create new record** providing what requester wants, rather than gathering multiple different records, create the new record
 - If request burdensome, unnecessarily broad, or controversial, **consider dialogue** with requester to narrow request or resolve by discussion
 - If denial justified based on exception, **consider whether** public interest favoring access or avoiding appeal outweighs exception purpose



SOLICITOR POINTERS ON RESPONSE

- Put thinking cap on / involve solicitor:
 - With 30 exceptions, it's often not immediately obvious that an exception applies – or that an exception applies to part but not all of a record
 - If uncertainty about proper response, carefully compare the record against “30 Exception Checklist”
 - Proper response often nuanced – or in gray area – consider both practicality and solicitor analysis of OOR and court cases
 - If denial, solicitor should provide statement of legal authority



DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT

- Key language, concept, and threshold question
- Not one of 30 exceptions – but part of “record” definition – therefore, similar to exception
- What does this language mean? OOR and court decisions explain



DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT

- Emails – SD email account
- Lampeter-Strasburg School District



(Doc #: AP 2017-1917 – April 5, 2017 OOR decision)

- District denied request for: all communications of 7 named employees and board members over 3-month time period; requester appealed
- OOR required *in camera* review of emails
- Emails were on district computer system, not personal email account



DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT

Lampeter-Strasburg

- OOR ruled that emails are not district records just because emails are on district computer system
- OOR ruled that emails by parents criticizing volleyball coach and coach responses to criticisms are **not records** – because they do not document the volleyball “activity” of the district – and parents have no authority over operation of team
- OOR ruled that emails between coach and Athletic Director reporting team competition results **are records** – because created in connection with their roles in operating the volleyball “activity”



DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT

- Emails – personal email account
- **Montoursville Area School District** (Doc #:AP 2016-1118 – Sept. 22, 2016 OOR decision)
 - District denied request for: all emails received and responses by a named school board member for a 1-month time period; requester appealed
 - OOR required *in camera* review of **emails**



DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT

Montoursville

- OOR ruled that a school district cannot deny access on the grounds that the emails were exchanged on personal email account among board members constituting less than a quorum – it is enough that emails relate to a district activity, namely a school construction project – and are between district officials



DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT

- Cell phones/text messages

- **Paint Township**

(Cmwlt. Ct. Feb. 5, 2015)



- Due to response delay, Township was deemed to have denied request for: the content of all incoming or outgoing text, picture, or video messages of a Township supervisor on **Township cellphones** or on **private cellphone** used for Township business
- Trial court ordered the Township to provide the information – and also to retain a forensic computer expert to retrieve data previously deleted from cellphones
- Commonwealth Court accepted the Township and telephone company affidavit that all data had been deleted from **Township** cellphones

DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT

Paint Township

- Commonwealth Court upheld the trial court order for the Township to inspect the supervisor's **private** cellphone and provide any data relating to Township business
- Commonwealth Court overruled the trial court order of a **forensic expert** – Per Court, assuming data could be retrieved, this would violate the RTKL rule that an agency is not required to create a record that does not currently exist
- Commonwealth Court stated that an agency can be forced to provide **metadata** – but decided that was a nonissue in the pending case



DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT



- Personal handwritten notes of phone calls
- **Clearfield County** (Cmwlth. Ct. Jul. 28, 2016)
 - County denied request for: handwritten notes made by Commissioner of telephone calls from 2 private citizens expressing views on transaction under consideration by County
 - Commonwealth Court denied access because the notes: (1) documented citizen input; (2) the input was communicated to an individual Commissioner with expectation of confidentiality; (3) the Commissioner did not rely on the information to make a decision; and (4) the Commissioner did not share the notes or their contents with other Commissioners

DOCUMENTS TRANSACTION OR ACTIVITY OF DISTRICT

- Facebook posts



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- **Chambersburg Borough**

(Doc #:AP 2017-1229 – Aug. 16, 2017 OOR decision)

- Borough denied request for: all Facebook posts and associated comment threads on the Mayor’s public figure Facebook page and relating to a mural proposal
- OOR ruled that the Facebook posts and threads are public records – and ordered access – because the page contains discussions and posts regarding Borough activities
- **Note:** OOR and courts have made a distinction between **parent** or **citizen** communications vs. **employee/board member/public official** communications – focus is on whether communication **documents** a district or other agency **transaction** or **activity**



SOLICITOR THOUGHTS: THINK AHEAD

- Public sector very different from private sector because of: (1) RTKL “sunshine” purposes; (2) simplicity and no expense to make RKL request (vs. court litigation and discovery); and (3) expense and burden of district response
- To avoid burdensome search requirements and legal issues related to personal email accounts, texts, and social media, request or direct board members and employees to:
 - Use only district email accounts for emails about district transactions and activities – do not use personal email
 - Minimize electronic communications about district matters – emails, text messages, social media, etc.



SOLICITOR THOUGHTS: THINK AHEAD

- More talk; less writing – better communication, fewer misunderstandings, simplify RKL responses
- Explain to employees and board members potential adverse consequences of excessive use of electronic communications relating to school matters
- Adopt board policy on such communications?



RECORD RETENTION

The RTKL does not address required record retention

- Section 507 – Retention of Records:
 - “Nothing in this act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of an agency established pursuant to law, regulation, policy or other directive.”
- Retention policy should include statement on schedule for email deletion – with option to save important items in folder or other storage medium
- District goal should be a strong, effective retention policy
- *Can't simply say “0 days for everything”*



RECORD RETENTION

- Must balance agency needs and transparency
- Many reasons to retain certain records for long time – and also legal mandates for certain records
- However, keeping emails for long time can add many hours and significant expense for required RTK search, analysis, and response
- If litigation filed or threatened, might need to suspend normal email deletion policy for certain records – “Litigation Hold”
- Have emails been deleted? Back-up tapes?
- PASBO Webcast – November 7



REQUESTS FOR COMMERCIAL PURPOSE

- For example: purchase orders and invoices for last 5 years
- Can cost hundreds or thousands of dollars in staff time to respond
- Often “mass emails” – misuse of RTKL
- Unfortunately, request purpose or mass mailings don’t matter
- Consult solicitor on strategy for response, including possible compromise with requester, or denial based on insufficiently specific request



SCHOOL BOARD MEMBER RTKL REQUESTS

- Can involve much staff time/significant expense
- Consider discussion to narrow information request
- Make sure board member knows impacts of time, expense, and notice to third parties



PERPETUAL REQUESTERS

- Can be a nuisance and require significant staff time and expense
- But cannot ignore
- Look for quickest path to response/possible compromise – don't start a war



NOTABLE EXCEPTIONS

- **Procurement** – records related to district procurement are accessible under RTKL but only after: (1) contract is awarded, or (2) all bids are rejected
- **Personal identification information** – such as social security number, personal email address
- **Academic records** – such as academic transcripts
- **Public safety** – when disclosure would jeopardize public safety
- **Computer systems** – when disclosure would jeopardize computer security

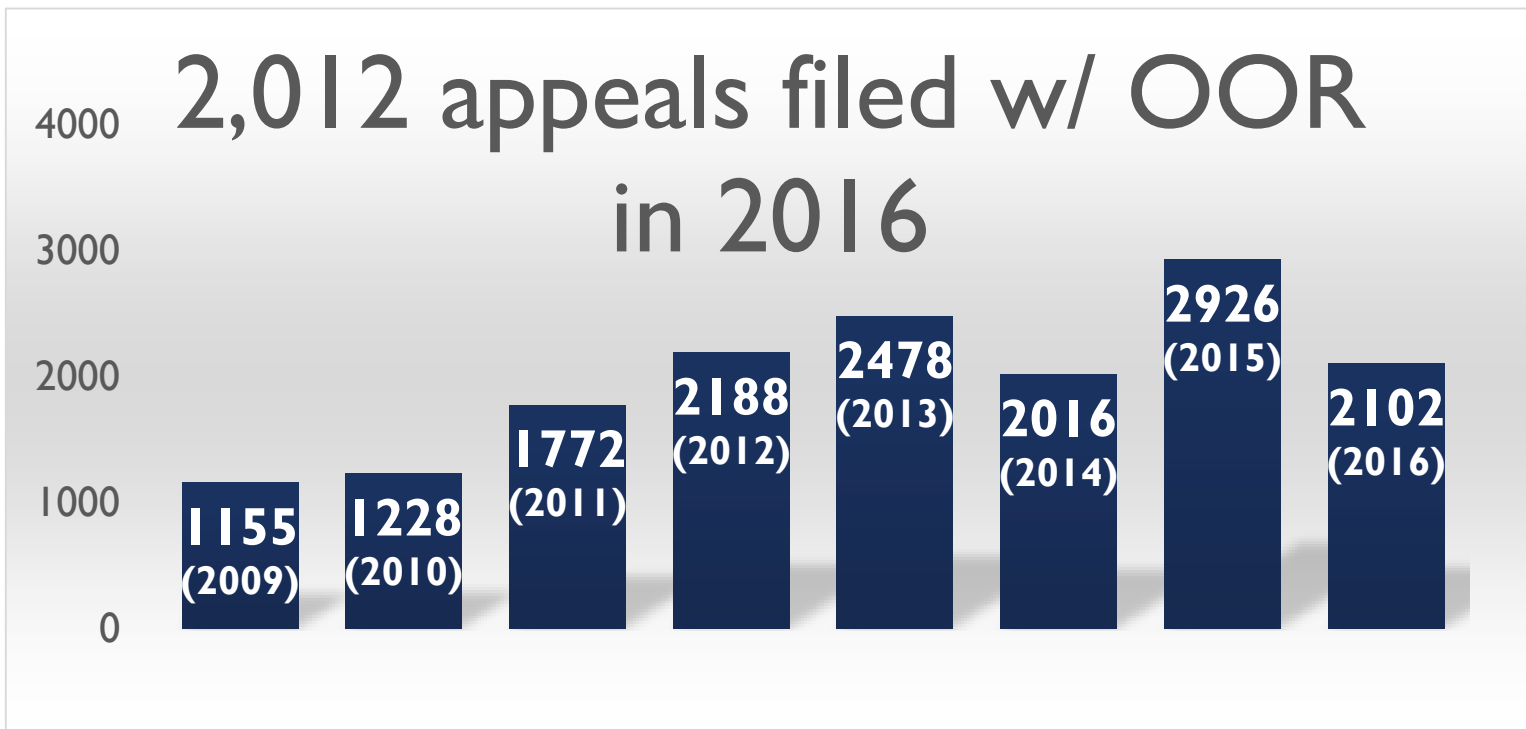


NOTABLE EXCEPTIONS

- **Employee records** – including evaluation or information regarding discipline
- **Criminal or non-criminal investigation** – such as complaints submitted to district and investigative notes or reports
- **Internal, pre-decisional deliberations** – records reflecting pre-decisional deliberations by board members or employees (but exception does not apply to records presented to school board for deliberation at a public meeting)
- **Minors** – record identifying the name, home address, or date of birth of a child under age 18



OOB – APPEALS FILED BY YEAR



OOOR'S MEDIATION PROGRAM

Goal: Resolve more cases informally

- **49 successful mediations** in 2016
- Both sides agree to confidentiality
- OOR provides trained mediator
- If mediation successful, appeal is withdrawn
- There's no harm in agreeing to mediation
 - Worst-case scenario: final decision is slightly delayed



TRAINING FROM OOR

Training on the RTKL and Sunshine Act

- OOR website filled with information
 - Agency Open Record Officer Guidebook
 - www.openrecords.pa.gov
- On-site training: basics, recent cases and more
 - Details on OOR website
 - Or call George Spiess, 717-346-9903



TIME FOR QUESTIONS

- Send text questions using the question function in your control panel.
- Type message in box and click “Enter” to send.



THANK YOU FOR YOUR PARTICIPATION!

- REMINDER:
- Webcast sites are asked to have every participant sign-in on the Attendance Form and return to the PASBO Office for attendance and credit purposes.
- Forms must be received by October 27.



JOIN US AT THESE UPCOMING PROGRAMS:

Face-to-Face Workshops

- FACILITIES MANAGEMENT/TRANSPORTATION CONFERENCE – October 26-27, Grantville
- FOOD SERVICE CONFERENCE & COMMODITY SHOW – November 7 & 8, State College
 - **8.5 USDA Credits**
- ELEMENTS OF SCHOOL FINANCE – November 16
- ELEMENTS OF HUMAN RESOURCES – December 5, Kulpsville & December 6, Cranberry Twp.

Webcasts

- BEST PRACTICES IN CONTRACTS – October 24
- PROGRESSIVE DISCIPLINE FOR CERTIFICATED AND NON-CERTIFICATED EMPLOYEES – November 2
- RECORD RETENTION – November 3
- LEGAL ISSUES IN COOPERATIVE PURCHASING – December 1
- PROS AND CONS OF EMERGING TRANSPORTATION TECHNOLOGY – December 13
- ADDRESSING UNPAID LUNCH DEPTS WITHOUT IMPACTING STUDENTS – December 14
 - **1.5 USDA Credits**

APPENDIX – PRIMARY RTK EXCEPTIONS (30 EXCEPTIONS CHECKLIST)

- RTKL states over thirty (30) exceptions where records do not have to be disclosed
- Topical subcategories of exceptions:
 - A. General Exceptions
 - B. Business/Financial Matters
 - C. School Buildings/Facilities/Public Safety
 - D. Certain Employee Information
 - E. Labor Relations Information
 - F. Investigative Materials
 - G. Pre-Decisional Deliberations
 - H. Privileged Communications
 - I. Real Estate
 - J. Student Information

Note: The below list is not comprehensive, and omits exceptions not applicable to school districts.



A. GENERAL EXCEPTIONS

- **Does Not Document Transaction or Activity of District** – access is not mandated unless the information documents a transaction or activity of the district. This is the first threshold question. § 102 definition of “record”
- **Disclosure Prohibited by Other Law** – access is prohibited under RTKL if prohibited by other law. This is a second threshold question. § 701
- **Constitutional Right to Information Privacy** – The Pennsylvania Supreme Court has ruled that an individual possesses a constitutional right to privacy in certain types of personal information (including his or her home address). When an RKL request implicates personal information not otherwise expressly exempt from disclosure, it is necessary to balance the individual’s interest in informational privacy against the public interest in disclosure. Such personal information may be released only when the public benefit outweighs the privacy interest. ***PSEA v. Commonwealth, 148 A.3d 142 (Pa. 2016)*** This is a third threshold question.



GENERAL EXCEPTIONS

- **Personal Identification Information** – access is not mandated for the following personal information:
 - Social Security number; driver’s license; driver’s license number; personal financial information (other than district compensation); home, cellular or personal telephone numbers; personal email addresses; employee number or other confidential personal identification number.
 - A spouse’s name, marital status, beneficiary, or dependent information.

§ 708(b)(6)

- **Personal Notes/Working Papers** – access is not mandated for notes and working papers prepared by or for a district official or employee used solely for that official’s or employee’s own personal use, including telephone message slips, routing slips, and other materials that do not have an official purpose. § 708(b)(12)
- **Medical Information** – access is not mandated for a record of an individual’s medical, psychiatric or psychological history, or disability status, including an evaluation; consultation; prescription; diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program; enrollment in workers’ compensation, and unemployment compensation would disclose individually-identifiable health information. § 708(b)(5)



GENERAL EXCEPTIONS

- **Social Services** – access is not mandated for a record or information identifying an individual who applies for or receives social services or otherwise relates to an individual’s eligibility to receive social services. **§ 708(b)(28)**
- **Unpublished Academic Works** – access is not mandated for unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material. **§ 708(b)(14)**
- **Academic Records** – access is not mandated for academic transcripts, examinations, examination questions, scoring keys, and answers to examinations, including licensing and other examinations relating to the qualifications of an individual; examinations given in the district. **§ 708(b)(15)**
- **Trade Secret/Confidential Proprietary Information** – access is not mandated for a record that constitutes or reveals a trade secret or confidential proprietary information. **§ 708(b)(11)**

Note: Special notice rules on disclosing documents marked by third party as trade secret or confidential proprietary information.



B. BUSINESS/FINANCIAL MATTERS

- **Insurance Communications** – access is not mandated for a record or information relating to a communication between the district and its insurance carrier, administrative service organization, or risk management office. (Exception does not include actual policy, which is subject to disclosure.) § 708(b)(27)
- **Loss of State or Federal Funds** – access is not mandated for a record that would result in the district’s loss of state or federal funds. § 708(b)(1)(i)
- **Pre-Award Bid Information** – access is not mandated for a proposal for procurement or disposal of supplies, services, or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder’s or offeror’s economic capability; or the identity of members, notes, and other records of district proposal evaluation committee under 65 Pa.C.S.A. Ch. 13A. § 708(b)(26)

Note: Special notice rules on disclosing documents marked by third party as trade secret or confidential proprietary information.



C. SCHOOL BUILDINGS/FACILITIES/PUBLIC SAFETY

- **Physical Harm/Personal Security** – access is not mandated for disclosure of a record that would likely result in a substantial and demonstrable risk of physical harm to or the personal security of an individual. § 708(b)
- **Public Safety** – access is not mandated for a record maintained by the district in connection with local law enforcement or other public safety activity if disclosure would likely jeopardize or threaten public safety or preparedness of public protection activity. § 708(b)(2)
- **Security of Facilities** – access is not mandated for a record if disclosure creates a likelihood of endangering the safety or physical security of a building or facility, which may include, but not be limited to:
 - networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act;
 - building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration, or security of critical systems, including public utility systems; structural elements; technology; communication; electrical; fire suppression; ventilation; water; wastewater; sewage; and gas systems.

§ 708(b)(3)



SCHOOL BUILDINGS/FACILITIES/PUBLIC SAFETY

- **Computer Systems** – access is not mandated for a record regarding computer hardware, software and networks, including administrative and technical records, if disclosure would likely jeopardize computer security. **§ 708(b)(4)**
- **Computer Systems** – access is not mandated for a record if disclosure creates a likelihood of endangering the safety or physical security of an information storage system, which may include, but not be limited to: documents or data relating to computer hardware; source files; software; and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act. **§ 708(b)(3)(i)**



D. CERTAIN EMPLOYEE INFORMATION

- **Employee Records** – access is not mandated for certain records relating to an employee, including among others the following:
 - Letter of reference or recommendation to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment to public office
 - Performance rating, review, or evaluation
 - Employment application of an individual who is not hired by the district
 - Written criticism of employee
 - Grievance material, including documents relating to discrimination or sexual harassment
 - Information regarding discipline, demotion, or discharge contained in a personnel file, except information that applies to the district's final action that results in demotion or discharge

§ 708(b)(7)



E. LABOR RELATIONS INFORMATION

- **Labor Negotiations** – access is not mandated for a record pertaining to strategy or negotiations relating to labor relations and related fact-finding or arbitration proceedings. (**Note:** This exception does not apply to a final and executed contract between the parties.) § 708(b)(8)(i)
- **Grievances** – access is not mandated for grievance material alleging violations of a collective bargaining agreement, including an exhibit entered into evidence at an arbitration proceeding, a transcript of an arbitration, or the opinion. (**Note:** This exception does not apply to the final award or order of an arbitrator in a dispute or grievance procedure.) § 708(b)(8)(ii)



F. INVESTIGATIVE MATERIALS

- **Criminal and Non-Criminal Investigations** – access is not mandated for a record relating to an investigation done by the district, including but not limited to:
 - Complaints submitted to the district
 - Investigative materials, notes, correspondence, and reports
 - A record that includes the identity of a confidential source, including individuals subject to Pennsylvania’s Whistleblower Law
 - Work papers underlying an audit
 - A record that includes information made confidential by law
- § 708(b)(16) and (17)**



G. PRE-DECISIONAL DELIBERATIONS

- **Draft Documents** – access is not mandated for a draft of a resolution, regulation, statement of policy, management directive, ordinance, or amendment prepared by or for the district. § 708(b)(9)
- **Draft Minutes** – access is not mandated for draft minutes of any school board meeting until the next regularly-scheduled meeting of the board. § 708(b)(21)
- **Internal, Pre-Decisional Deliberations** – access is not mandated for records reflecting the internal, pre-decisional deliberations by and between the district, its school board members and/or employees relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action, or any research, memos, or other documents used in pre-decisional deliberations. (**Note:** This exception does not apply to records presented to the school board for deliberation purposes at a public meeting, applications for state funds, or results of public opinion surveys.) § 708(b)(10)



H. PRIVILEGED COMMUNICATIONS

- **Attorney-Work Product** – access is not mandated for a record reflecting district consultations with its attorney or other professional advisors regarding information or strategy in connection with litigation or issues on which identifiable complaints are expected to be filed. §§ 102, 305, 701
- **Attorney-Client Privilege** – access is not mandated for a record reflecting confidential communications between the district and its solicitor or special counsel providing a legal opinion or discussing a particular legal matter. §§ 102, 305, 701
- **Confidential Student Communication** – disclosure of a record reflecting confidential communications between a student and a school nurse, guidance counselor, or other district employee is prohibited by 42 Pa.C.S.A. § 8550.



I. REAL ESTATE

- **Real Estate Appraisals** – access is not mandated for the contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the district relating to the following:
 - The leasing, acquiring or disposing of real property or an interest in real property
 - The purchase of public supplies or equipment included in the real estate transaction

Note: This exception does not apply once the decision is made to proceed with the lease, acquisition, or disposal of real property or an interest in real property or the purchase of public supplies or construction project. §
708(b)(22)



J. STUDENT INFORMATION

- **Minors** – access is not mandated for a record identifying the name, home address, or date of birth of a child (17) years of age or younger. **§ 708(b)(30)**
- **FERPA** – may not disclose information protected by FERPA (even if requested by parent) (but parent may exercise FERPA rights). **§§ 102, 305, 701**

