



pennsylvania

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

PA State Association of Boroughs

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<https://www.openrecords.pa.gov>

[@ErikOpenRecords](#)

[@OpenRecordsPA](#)

earneson@pa.gov

(717) 346-9903

Two Statewide AORO Surveys

Office of Open Records and the Legislative Budget & Finance Committee

- OOR survey conducted in February 2017
- LBFC survey conducted later in 2017
- Each survey sought info from Agency Open Records Officers (AOROs) across agency types
- Each survey received > 1,000 responses
 - *OOR received 40 county responses*

Results from OOR Survey

How many RTK requests did you receive in 2016?

- 0-10 requests, 57.5%
- 11-20 requests, 16.9%
- 21-50 requests, 13.0%
- 51-100 requests, 5.3%
- 101+ requests, 7.2%
- In other words: **87.4% of agencies received fewer than 1 RTK request per week**, while 7.2% received more than 2 requests per week

Results from OOR Survey

In an average work week, how many hours does your agency spend responding to RTK requests?

- 0-1 hours, 72.8%
- 2-5 hours, 19.0%
- 6-10 hours, 4.7%
- 11-20 hours, 1.7%
- 21-40 hours, 0.9%
- 41+ hours, 0.9%
- In other words: 96.5% of agencies spent 10 hours or less responding to RTK requests each week in 2016, while 1.8% spent 21 or more hours per week

Results from LBFC Survey

Annual cost to agencies to comply with RTKL

- Almost 54 percent of agencies reported an annual cost of \$500 or less
- About 92 percent of agencies reported an annual cost of \$10,000 or less
- Total statewide cost of responding to RTKL requests 2016 estimated at \$5.7 to \$9.7 million. With more than 6,000 agencies across the state, average cost is \$950 to \$1,617

Results from LBFC Survey

RTKL Requests & Appeals

- An estimated 109,000 RTKL requests were received by all state and local agencies, combined, in 2016
- Median number of requests per agency = 10
- Fewer than 3% of requests are appealed

Results from LBFC Survey

Commercial Requests

- 35% of requests in 2016 were commercial

Inmate Requests

- 7% of requests in 2016 from inmates
- DOC received > 50% of inmate requests

RTKL Basics: What is a Record?

Definition of a Record

- “Any information regardless of its physical form or character that **documents a transaction or activity of an agency** and is created, received, or retained pursuant to law or in connection with a transaction, business or activity of an agency.”

RTKL Basics: Specificity

Requests must be specific – three-part test:

- Subject – Must identify an agency transaction or activity for which the record is sought.
- Scope – Must identify a discreet group of documents either by type or recipient.
- Timeframe – Needs to be finite, can be implied.

RTKL Basics: Receiving a Request

Upon receiving a request, the AORO must:

- Note the date of receipt on the request.
- Compute the five-day response period and note that date on the written request.
- Maintain a copy of the Request until it is fulfilled (and, best practice, until all appeals are resolved).
- If denied, keep the Request for 30 days or, if appealed, until the OOR issues a Final Determination.

RTKL Basics: Agency Response

Upon receiving a request, the AORO must:

- Agency must send a written response within five business days.
 - Those are *agency* business days.
- A mailed response is not required to be received within five business days; however, it must be placed in outgoing mail within that time frame.

RTKL Basics: Extensions

Agencies may invoke a 30-day extension:

- 30 calendar days, but the extension must...
 - Be within the initial 5 business day window.
 - Be in writing to the requester.
 - Provide a reason (see Section 902).
 - Provide a date by which the requester can expect a response.
 - Provide an estimate of any costs.
 - 5 + 30 application per Section 902(b)(2).

RTKL Basics: Third-Party Records

Some contractor records subject to access:

- Contracts are by and large public records.
 - May be some confidential & proprietary information.
- Also public: Any record in the possession of a party with whom the agency has contracted to perform a governmental function and is not exempt under the RTKL.
 - “Governmental function” is the “delegation of some non-ancillary undertaking of government.”

RTKL Basics: Mediation

OOR has a free mediation program:

- Either party may request mediation. If both parties agree, mediation begins.
- If mediation is unsuccessful, appeal transferred to a different appeals officer for a final determination.
- Particularly effective where the Request is broad or covers a large number of records that are responsive to the Request, but which the Requester may not have intended to seek.

Act 22 of 2017

Governs access to police video & audio

- Act 22 applies to “any audio recording or video recording made by a law enforcement agency”
- The Right-to-Know Law **does not apply** to requests for police video & audio
- New page on OOR website
 - <http://openrecords.pa.gov>

Act 22 of 2017

Act 22 defines “law enforcement agency” as:

- Office of the Attorney General;
- District Attorney’s Office; or
- Agency that employs a law enforcement officer
 - “Law enforcement officer” includes “an officer of the U.S., the Commonwealth or a political subdivision ... who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter ..., a sheriff or deputy sheriff and any attorney authorized by law to prosecute or participate in the prosecution of the offense”

Act 22 of 2017

Requests must:

- Be sent within 60 days of recorded event
- Be sent to law enforcement agency's AORO
- Include date & time of event
- Include requester's relationship to event
- If recording was inside a residence, identify every person present (unless unknown & not reasonably ascertainable)

Act 22 of 2017

Response from agency – within 30 days:

- 30 calendar days to respond
- May (w/ MOU) engage DA or AG to respond
- May deny request if recording includes:
 - Potential evidence in a criminal matter; or
 - Information pertaining to an investigation or a matter in which a criminal charge has been filed; or
 - Confidential information or victim information; and
 - Reasonable redaction will not safeguard the potential evidence or the information

Act 22 of 2017

Response from agency:

- Granted requests can charge “reasonable fees” (undefined) for copy of recording
- If no response issued in 30 days, deemed denied & can be appealed

Act 22 of 2017

Appealing an agency denial:

- 30 days to file an appeal
- Appeal to appropriate Court of Common Pleas
 - \$125 filing fee
 - Copies of request & any responses
 - Proof AORO was served with appeal
 - If inside a residence, must also serve everyone who was in the residence unless unknown & not reasonably ascertainable

Act 22 of 2017

Discretionary Release of Recordings

- Nothing in Act 22 precludes a law enforcement agency or a prosecuting attorney with jurisdiction from choosing to release an audio or video recording, with or without a written request
 - In certain cases, the law enforcement agency can only release the recording with the written permission of the prosecuting attorney

Personal Information

Much personal information is exempt:

- Social Security numbers, driver's license numbers, personal email addresses, home and cellular telephone numbers, and personal financial information (other than salary and other compensation).
- Spouse's name, marital status, beneficiary or dependent information.

Home Addresses

Home addresses generally:

- RTKL exempts home addresses of law enforcement officers and judges.
- Supreme Court case: *PSEA v. OOR*
 - Right to privacy in home addresses and other personal information.
 - Balancing test: Does the right to privacy outweigh the public's interest in dissemination?

Home Addresses

Some practical examples:

- Elected officials with residency requirements.
 - Other permits (e.g., liquor) w/ residency requirements.
- Property tax rolls / assessment information.
- Building permits.
- Health issues re: lead levels in water.
 - Ordered release of block-level information.

Home Addresses

Some practical examples:

- Elected officials with residency requirements.
 - Other permits (e.g., liquor) w/ residency requirements.
- Property tax rolls / assessment information.
- Building permits.
- Health issues re: lead levels in water.
 - Ordered release of block-level information.
- Home address of the guy driving the snowplow that knocked over my mailbox.

Training from the OOR

Training on the RTKL & Sunshine Act

- OOR website filled with information
 - <https://www.openrecords.pa.gov>
- On-site training: basics, recent cases & more
 - Details on OOR website
 - Or call George Spiess, 717-346-9903

OOR Resources

Website, Twitter, Email Lists & More

- Web: <https://www.openrecords.pa.gov>
- Blog: <https://openrecordspa.wordpress.com>
- Twitter: [@OpenRecordsPA](#), [@ErikOpenRecords](#)
- YouTube Channel: Office of Open Records
- Podcast: Open Records in Pennsylvania
- Email lists: Daily FD Digest & General Updates
 - Subscribe at OOR website



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THANK YOU

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