



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?

Which do you think SHOULD be available under the RTKL?

1. An agency's budget for FY 2018-19
2. Inappropriate emails sent to a co-worker on gov't computer
3. Video recording of a city council meeting
4. Police detective's interview notes
5. City, county or state proposal to Amazon for HQ2
6. Database of lead tests done by city w/ home addresses

What Records are Available?

Which of these ARE available under the RTKL?

1. An agency's budget for FY 2018-19
- ~~2. Inappropriate emails sent to a co-worker on gov't computer~~
3. Video recording of a city council meeting
- ~~4. Police detective's interview notes~~
5. City, county or state proposal to Amazon for HQ2
6. Database of lead tests done by city ~~w/ home addresses~~
 - OOR ordered "100 block of Pine St." rather than specific addresses

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

Records Take Many Shapes

The Right-to-Know Law...

- **Doesn't** distinguish between formats
 - Paper, email, texts, social media, audio, video, etc.
- **Doesn't** distinguish between agency & personal devices (or agency & personal email accounts)
 - Practical issues re: accessing personal devices & email
 - Best practice: Agency business done on agency devices & email
- Bottom line: Is it a **record**? And if so, is it a **public record**?

Records Take Many Shapes

More examples of records accessed via RTKL...

- Many settlement agreements with outgoing gov't employees
 - Confidentiality clauses do NOT trump the RTKL
- \$8 million paid by PSP to settle 18 sexual harassment lawsuits
- A recommendation, never implemented, to install flashing lights at a RR crossing where a woman was subsequently killed
- Documents showing a dramatic increase in towing referrals for one specific company after a directive from a local police chief

Records Take Many Shapes

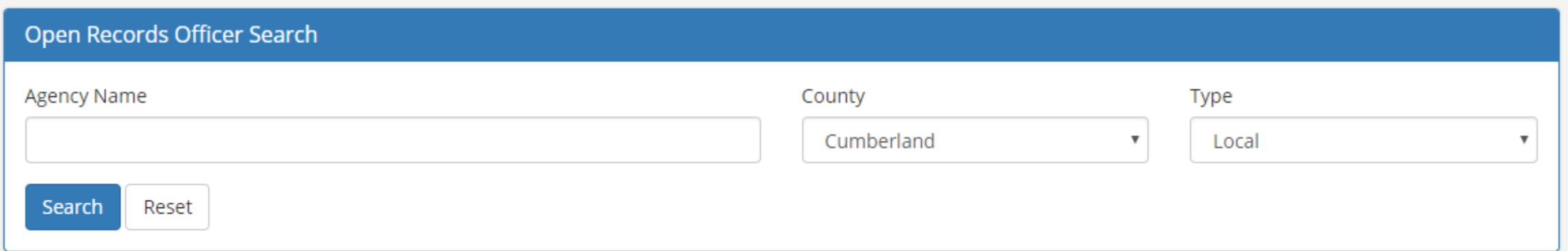
More examples of records accessed via RTKL...

- \$2 million paid by Philadelphia SD to defend itself in lawsuits related to a no-bid contract for surveillance cameras
- \$436,000+ paid to defend former Attorney General Kathleen Kane in lawsuits filed by former employees
- Documents showing that a PPL executive called the company's storm room to ask about an outage in his neighborhood, leading to a delay in service restoration for other customers

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 contains three input fields: "Agency Name" (a text box), "County" (a dropdown menu with "Cumberland" selected), and "Type" (a dropdown menu with "Local" selected). Below these fields are two buttons: "Search" (in blue) and "Reset" (in white with a grey border).

Pennsylvania Universities & Colleges

RTKL applies differently to three types of universities & colleges

- State System of Higher Education
 - West Chester, Lock Haven, Clarion, Slippery Rock, etc.
 - State agencies just like any other state agency
- State-Related (Penn State, Temple, Pitt, Lincoln)
 - Hybrid, covered by Chapter 15 of RTKL (Form 990 & top salaries)
- Private
 - Not covered by RTKL other than gov't contracts

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:

1. Seek Records, Don't Ask Questions

Requests should seek access to records, not ask questions

- Agencies may deny requests which ask questions
- Why did the contract get awarded to Acme Consulting?
 - Request meeting minutes & audio recording of meeting

Writing a Good RTK Request:

2. Be Specific

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

- Subject: “The ‘transaction or activity’ of the agency”
- Scope: “A discrete group of documents (e.g., type or recipient)”
- Timeframe: “A finite period of time”
- Vast “fishing expeditions” not permitted (hook vs. net)
- Phrases like “any and all” & “but not limited to” raise questions
 - “Any and all documents, including but not limited to emails, memos, and spreadsheets, regarding the 2018 Pine Street Bridge Project”

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**

Writing a Good RTK Request:

3. Be Careful When Requesting Lists

Requesting a “list” can be problematic

- If no actual list exists, agency not required to create one
 - “List of all lawsuits filed against the agency in 2017”
- Better to seek records containing the information you want
 - “Records showing captions of lawsuits filed against agency in 2017”
 - Valid to add: “If info can be provided in a list, that’s preferred”

Writing a Good RTK Request:

4. Accessing Information in Databases

Information in databases subject to presumption of openness

- If possible, know what **format** the database can export to
 - Seeking a specific, but incorrect format, can lead to a denial
- When relevant, consider using suggested queries
 - Queries may be necessary for extracting information

Speaking of Databases...

Two useful resources:

- Online Contract Database, <http://contracts.patreasury.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

How Long Does This Take?

Every state & local agency **must** respond to RTK requests

- Must respond in writing **within 5 (agency) business days**
 - If no response received, request is deemed denied
- Agency can extend timeline by 30 calendar days
 - Any other extension must be agreed to by requester & **in writing**
- Track all **dates & deadlines** in case you need to appeal

Tip: Communicate with the Agency

Good communication can **prevent & solve many issues**

- Good practice to let agency know you're willing to talk
- Requesters often submit broad requests
 - Understandable, but can be expensive & frustrating for both sides
- If agreement reached on revised request, put it in writing
- Agency cannot require requester to provide reason for request
 - They can ask, but requester can decline to answer
 - Requester may sometimes want to provide info

How Much Does This Cost?

OOR fee schedule developed pursuant to RTKL

- General rule: No charge for electronic records
 - Redactions may necessitate printing electronic records
- Up to \$0.25/page for hard copies (8.5 x 11, b&w)
- Requesters can photograph records
- Agencies required to provide records in medium requested (electronic vs. hard copy), do not have to create a record

What If My Request is Denied?

Most denials can be appealed to the OOR

- If request is denied, appeal can be filed within 15 business days
- Most appeals filed with the OOR
 - Not Attorney General, Auditor General, Treasurer, General Assembly
 - Not Courts (requests & appeals governed by Rule 509)
 - Denials from **local** agencies based on **criminal investigatory records** appealed to county DA (but PSP denials appealed to OOR)
- Can also appeal redactions (which are denials) & fees

Appealing a RTKL Denial

OOR appeal process designed to be simple

- File appeals using online form at OOR website
 - About 10 to 15 minutes to fill out
- **No lawyer necessary**
- OOR assigns Appeals Officer to oversee case
- Both sides can present evidence & argument
- OOR has **30 days** to issue Final Determination

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](#)

Overall Cost of the RTKL

Legislative Budget & Finance Committee:

- Study released in 2018 (data covering calendar year 2016)
- 54% of agencies reported **\$500 or less annual cost**
 - 92% of agencies reported \$10,000 or less
- Total cost (all agencies, 2016) ~ \$5.7 million to \$9.7 million
 - Median cost = \$500
 - > 6,000 agencies, so avg. cost = \$950 to \$1,617 per agency

Potential Amendments to the RTKL

RTKL not amended since enactment; numerous proposals

- New (higher) fees for commercial requests
 - Does not include the media
- Courts can fine agencies **\$500/day for ignoring an OOR order**
- Inmate requests limited to certain categories of records
- Campus police department = local agency
- State-related universities put much more budget info online

OOB 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.