



# pennsylvania

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

## **State System of Higher Education**

*October 8, 2019*

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# Background

## How do you get my job?

- Temple University, BA, Radio-Television-Film, 1991
- WJTL-FM (disc jockey), 1991-1993
- Lebanon Daily News (reporter), 1994-1996
- Senate Majority Leader Chip Brightbill, 1996-2006
- Senate Majority Leader Dominic Pileggi, 2006-2015
- Appointed by Gov. Tom Corbett, January 2015
- Six-year term ends January 2021

# 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)

# How a Bill Becomes a Law

## Senate Bill 1; Regular Session 2007-2008

 [Text](#)

 [\[History\]](#)

 [\[Votes\]](#)

**Sponsors:** [PILEGGI](#), [SCARNATI](#), [MELLOW](#), [ORIE](#), [KASUNIC](#), [MUSTO](#), [RAFFERTY](#), [O'PAKE](#), [TOMLINSON](#), [M. WHITE](#), [ERICKSON](#), [WAUGH](#), [FOLMER](#), [COSTA](#), [EARLL](#), [VANCE](#), [BOSCOLA](#), [CORMAN](#), [WONDERLING](#), [GORDNER](#), [RHOADES](#), [D. WHITE](#), [PIPPY](#), [MADIGAN](#), [ARMSTRONG](#), [BAKER](#), [C. WILLIAMS](#), [BRUBAKER](#), [BROWNE](#), [REGOLA](#), [DINNIMAN](#) and [EICHEBERGER](#)

**Printer's No.(PN):** [1763](#)\*, [1726](#), [1721](#), [1704](#), [1646](#), [1583](#), [1562](#), [1553](#), [1509](#), [772](#)

**Short Title:** An Act providing for access to public information, for a designated open-records officer in each Commonwealth agency, local agency, judicial agency and legislative agency, for procedure, for appeal of agency determination, for judicial review and for the Office of Open Records; imposing penalties; providing for reporting by State-related institutions; requiring the posting of certain State contract information on the Internet; and making related repeals.

**Actions:**

<a href="#">PN 0772</a>	Referred to STATE GOVERNMENT, March 29, 2007
	(Remarks see Senate Journal Page <a href="#">548</a> ), May 21, 2007
<a href="#">PN 1509</a>	Reported as amended, <a href="#">Oct. 29, 2007</a>
	First consideration, Oct. 29, 2007
	Re-referred to APPROPRIATIONS, Oct. 30, 2007
<a href="#">PN 1553</a>	Re-reported as amended, <a href="#">Nov. 14, 2007</a>
<a href="#">PN 1562</a>	Second consideration, with amendments, <a href="#">Nov. 19, 2007</a>
<a href="#">PN 1583</a>	Amended on third consideration, <a href="#">Nov. 27, 2007</a>
	(Remarks see Senate Journal Page <a href="#">1375</a> ), Nov. 27, 2007
	Third consideration and final passage, Nov. 28, 2007 ( <a href="#">48-1</a> )
	(Remarks see Senate Journal Page <a href="#">1405</a> ), Nov. 28, 2007

# How a Bill Becomes a Law

	In the House
	Referred to APPROPRIATIONS, Dec. 3, 2007
	Reported as committed, <a href="#">Dec. 3, 2007</a>
	First consideration, Dec. 3, 2007
	Laid on the table, Dec. 3, 2007
	Removed from table, Dec. 3, 2007
	(Remarks see House Journal Page <a href="#">2790</a> ), Dec. 5, 2007
<a href="#">PN 1646</a>	Second consideration, with amendments, <a href="#">Dec. 10, 2007</a>
	(Remarks see House Journal Page <a href="#">2813</a> ), Dec. 10, 2007
	Third consideration and final passage, Dec. 12, 2007 ( <a href="#">191-0</a> )
	In the Senate
	Referred to RULES AND EXECUTIVE NOMINATIONS, Dec. 12, 2007
<a href="#">PN 1704</a>	Re-reported on concurrence, as amended, <a href="#">Jan. 28, 2008</a>
	Re-committed to RULES AND EXECUTIVE NOMINATIONS, Jan. 29, 2008
<a href="#">PN 1721</a>	Re-reported on concurrence, as amended, <a href="#">Jan. 29, 2008</a>
	Senate concurred in House amendments, as amended by the Senate, Jan. 30, 2008 ( <a href="#">50-0</a> )
	(Remarks see Senate Journal Page <a href="#">1557</a> ), Jan. 30, 2008
<a href="#">PN 1726</a>	Corrective Reprint, Printer's No. 1726, Feb. 1, 2008

# How a Bill Becomes a Law

## In the House

Referred to RULES, Feb. 4, 2008

Re-reported on concurrence, as committed, [Feb. 6, 2008](#)

(Remarks see House Journal Page [351](#)), Feb. 6, 2008

[PN 1763](#) Amended, [Feb. 11, 2008](#)

House concurred in Senate amendments to House amendments, as amended by the House, Feb. 11, 2008 ([199-0](#))

(Remarks see House Journal Page [413](#)), Feb. 11, 2008

## In the Senate

Referred to RULES AND EXECUTIVE NOMINATIONS, Feb. 12, 2008

Re-reported on concurrence, as committed, [Feb. 12, 2008](#)

Senate concurred in House amendments to Senate amendments, Feb. 12, 2008 ([50-0](#))

(Remarks see Senate Journal Page [1650](#)), Feb. 12, 2008

Signed in Senate, Feb. 12, 2008

Signed in House, Feb. 12, 2008

Presented to the Governor, Feb. 12, 2008

Approved by the Governor, Feb. 14, 2008

Act No. [3](#)

# How a Bill Becomes a Law

## The “long” way:

- 10 printer’s numbers (which means *at least* 10 amendments)
- 7 committee votes
- 5 floor votes (all unanimous except one; that was 48-1)
- All in less than a year
  - Most public work done between Oct. 29, 2007, and Feb. 14, 2008
    - *About three and a half months*



# **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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Video recording of a city council meeting

# What Records Should be Available?

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Video recording of a city council meeting – IT IS AVAILABLE

*Municipal boards can meet in private for some reasons*

# **What Records Should be Available?**

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Police detective's interview notes

# What Records Should be Available?

Should this be available under the RTKL?

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

*Exemption for criminal investigative records*

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County proposal to Amazon for HQ2

# What Records Should be Available?

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County proposal to Amazon for HQ2 – IT IS AVAILABLE

*Agencies cannot claim the “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”)*

*Court review pending in Allegheny County*

# **What Records Should be Available?**

## **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

# What Records Should be Available?

## 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 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

# 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 / social media 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...

- 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

## One recent case involving public safety issues

- [2019-1265](#): Sought records related to surveillance cameras
  - Purchase orders, source of funding
- Allegheny County DA partially granted the request
  - Redacted “information that could give rise to the location or operation of cameras” including vendor, camera model & location
- Appeal filed on July 30, 2019; OOR decision on Sept. 19, 2019
  - Agency **cannot** withhold vendor names
  - Agency **cannot** withhold types of surveillance cameras purchased
  - Agency **can** withhold specific locations of the cameras

# Pennsylvania Universities & Colleges

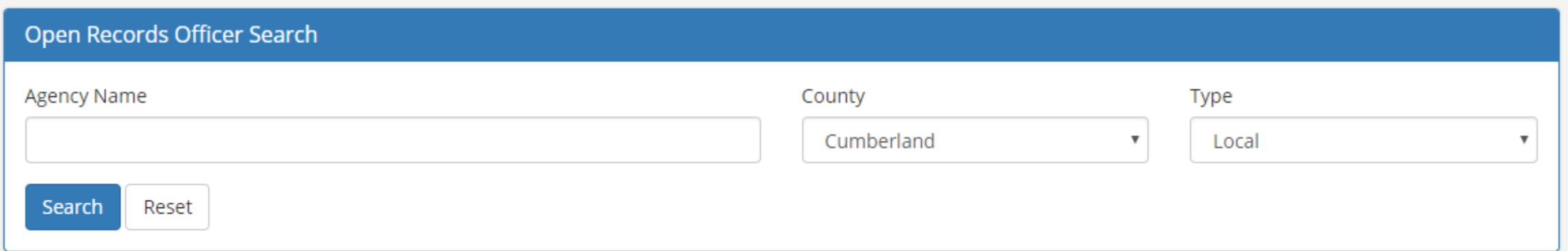
## RTKL applies differently to three types of universities & colleges

- State System of Higher Education
  - Lock Haven, Clarion, Slippery Rock, West Chester, 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

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).

# 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
- Note your request date and all related dates
  - Very important if you need to appeal

# 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...

# 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](#)

# 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

# How Long Does This Take?

## Relatively (compared to FOIA & other states) tight timeline

- Agency must respond **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



# 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
- OOR offers a voluntary mediation program

# 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

# 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

# OOOR 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.