



# pennsylvania

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

**Prof. Doug Swanson**  
**University of Pittsburgh**

*October 22, 2019*

<https://openrecords.pa.gov>

[@ErikOpenRecords](#)

[@OpenRecordsPA](#)

[earneson@pa.gov](mailto:earneson@pa.gov)

(717) 346-9903

# 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?**

**Should this be available under the RTKL?**

An agency's budget for FY 2018-19

# What Records Should be Available?

Should this be available under the RTKL?

An agency's budget for FY 2018-19 – IT IS AVAILABLE

*Financial records are the most public of all government records*

# **What Records Should be Available?**

**Should this be available under the RTKL?**

Video recording of a city council meeting

# What Records Should be Available?

Should this be available under the RTKL?

Video recording of a city council meeting – IT IS AVAILABLE

*Municipal boards can meet in private for some reasons*

# **What Records Should be Available?**

**Should this be available under the RTKL?**

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*

# **What Records Should be Available?**

**Should this be available under the RTKL?**

County proposal to Amazon for HQ2

# What Records Should be Available?

Should this be available under the RTKL?

County proposal to Amazon for HQ2 – IT IS AVAILABLE

*Agencies cannot claim the “trade secrets” exemption*

# **What Records Should be Available?**

**Should this be available under the RTKL?**

Database of lead tests done by city w/ home addresses

# What Records Should be Available?

Should this be available under the RTKL?

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

### Open Records Officer Search

Agency Name	County	Type
<input type="text"/>	<input type="text" value="Cumberland"/>	<input type="text" value="Local"/>
<input type="button" value="Search"/> <input type="button" value="Reset"/>		

# 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

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

- **Subject Matter:** Identify 'transaction or activity' of the agency
- **Scope:** Identify discrete group of docs (e.g., type or recipient)
- **Timeframe:** Identify a finite period of time
  - This is the most fluid factor – failure to identify a finite timeframe will not automatically render a request overbroad & a short timeframe will not make an overbroad request specific
  - Timeframe can be implied (e.g., “the ongoing Pine Street repaving”)



# 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**

# 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](#)

# 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...

# 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 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.