



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?

Should this be available under the RTKL?

An agency's budget for FY 2018-19

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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

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Video recording of a city council meeting – **IT IS AVAILABLE**

Agency boards, such as city councils, can meet in private (“executive session”) for certain reasons specified in law

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Police detective's interview notes

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

RTKL includes an exemption for criminal investigative records

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County proposal to Amazon for HQ2

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County proposal to Amazon for HQ2 – IT IS AVAILABLE

Agencies cannot claim the RTKL's "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”)

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Inappropriate emails sent by a gov't employee to a co-worker on gov't computer, during work hours

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Let's discuss the RTKL's 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

Records Take Many Shapes

Exclusive: How these Pa. schools fortified themselves after Parkland

By [Avi Wolfman-Arent](#) · August 2, 2019



A license-plate reader. Bullet-proof vests. Yoga lessons. And *lots* of security cameras.

Those items may sound disparate, but they're unified by a single stream of money.

A year ago, Pennsylvania earmarked \$40 million in competitive grants for school districts to make safety and security upgrades in the wake of school shootings in Parkland, Florida and Santa Fe, Texas.

Through a Right-to-Know request, Keystone Crossroads obtained summaries of what 231 districts, charter schools and technical schools plan to purchase with this unprecedented pot of money. The summaries provide rare insight into how school districts have adjusted priorities post-Parkland. And they shed light on how the modern, fortified school building looks and feels.

Records Take Many Shapes

WHYY: How these Pa. schools fortified themselves...

- \$40 million state grant program for school security
- 231 districts, charter schools & technical schools won grants
 - 7 license-plate readers (at one district)
 - Bullet-proof vests
 - Night-vision cameras
 - Airlock sensors for entrance doors
 - Yoga training (no further explanation included in article)

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

Cumberland ▼

Type

Local ▼

Search

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.