

Pennsylvania's Right to Know Law 101

A joint presentation between the Office of Open Records and the ACLU of Pennsylvania. Hosted by Jenkins Law Library.

Presenters:

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Agenda

- History and Background
- RTKL Basics
- How to File a RTKL Request
- How to Appeal a Denial
- Tips and Best Practices
- Q&A



History and Background

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)

PA Agencies and the RTKL

All “public records” subject for local agencies and Commonwealth agencies

- **Local:** municipalities, counties, school districts, police departments, authorities
- **Commonwealth:** departments, boards, governor’s office, Auditor General, Treasurer, Attorney General, PASSHE schools, community colleges

PA Governments and the RTKL

Fewer records available from some agencies

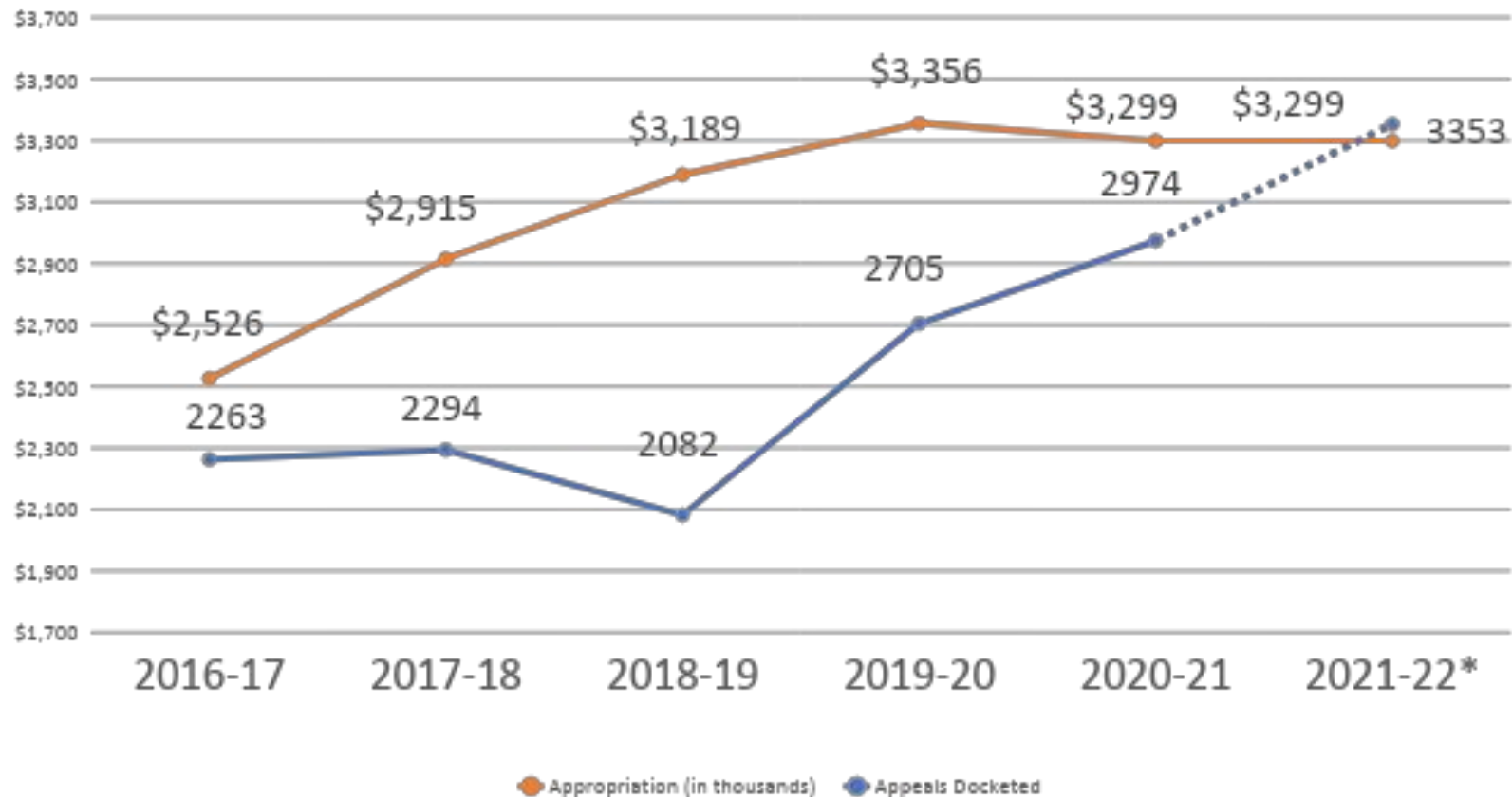
- **Judicial:** financial records
- **State-related universities:** Annual report must be filed
 - IRS Form 990
 - Salaries of all officers and directors
 - Highest 25 salaries paid to other employees
- **Legislative agencies:** “legislative records”
 - Financial record, bills, meeting minutes, transcripts of hearing, record of votes, administrative policies, audit report, annual reports, etc.
 - NOT emails.

Office of Open Records

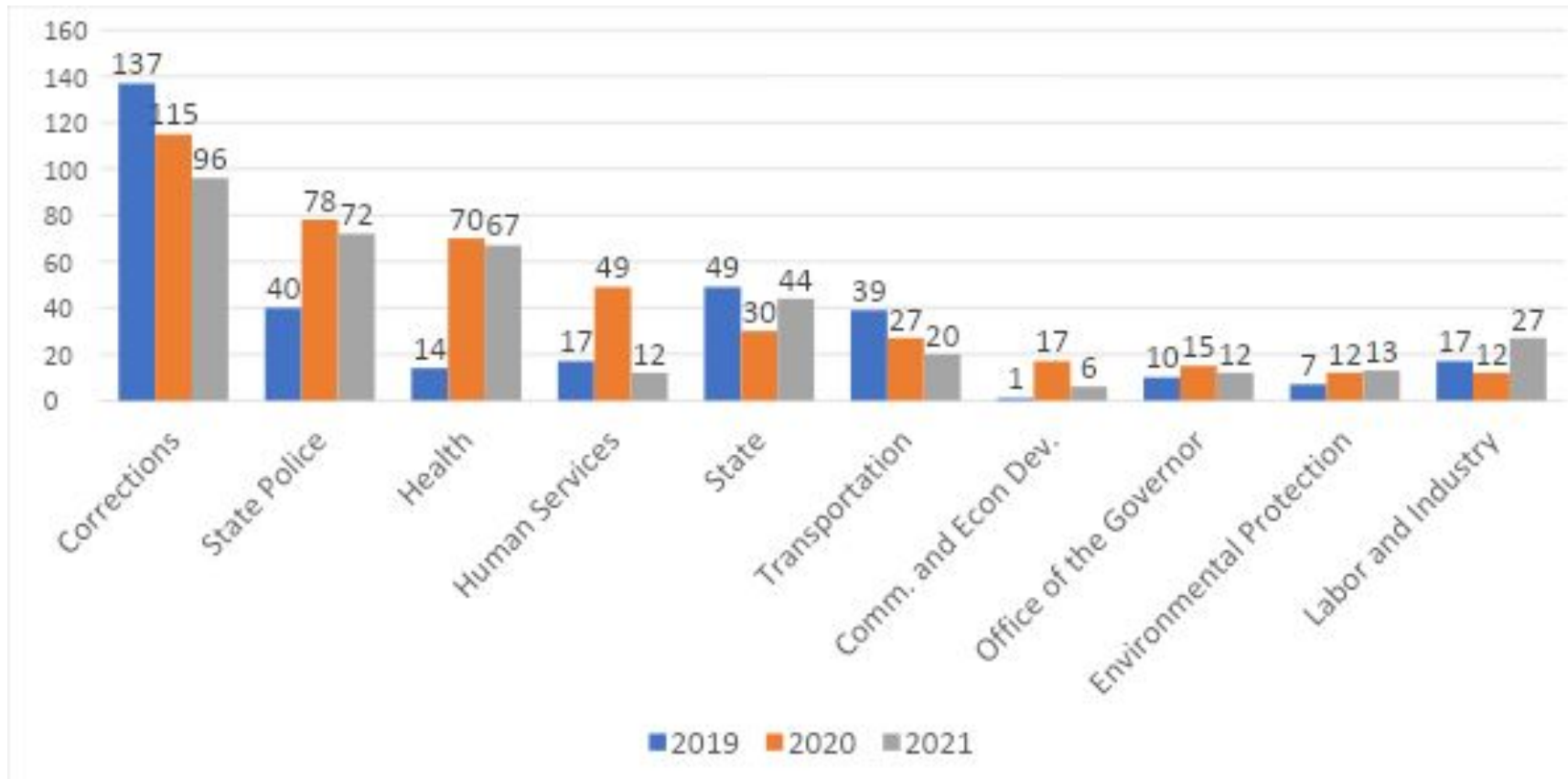
Created by RTKL: Independent & quasi-judicial

- Decide appeals filed by people denied access to records
- Provide RTKL & Sunshine Act training
- **22 total staff**
 - Executive Director & Deputy Director
 - 15 Attorneys (incl. 13 Appeals Officers)
 - 5 Administrative

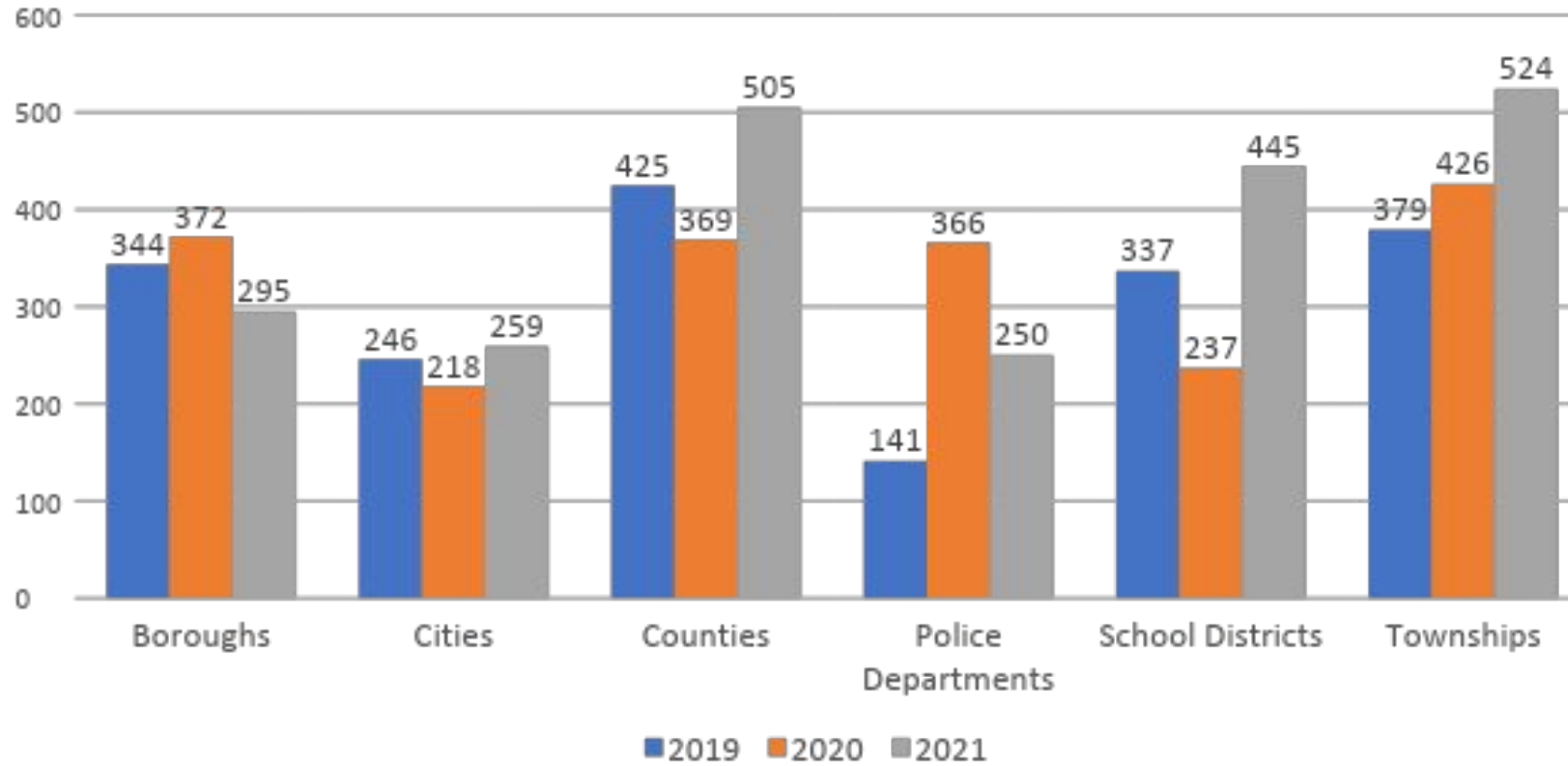
48% Increase in Appeals in Five Years



Health, State, State Police Experience Significant Spikes in Appeals



Local Agencies Also See Spikes in Appeals



Records Available Through the RTKL

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

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)
- Bottom line: Is it a **record**? And if so, is it a **public record**?

Limits to Records

What agencies are not required to do

- Do not have to create a record that doesn't exist
- Do not have to conduct legal research
 - “What law gives you the authority to do this thing I don't like?”
- Do not have to create electronic copies if only hard copies exist

Many Exemptions

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 (e.g., HIPAA, FERPA)
- Attorney-client privilege & other privileges
 - Only if recognized by PA courts; not “self-critical evaluation”
- Records can be made non-public by court order
- When a denial is appealed, agency bears burden of proof

Remember that agencies have to redact exempt material and (generally) still give you the rest of record!

Common Exemptions Raised by Agencies

Exemptions raised most often during appeals to OOR

1. Criminal investigative, 708(b)(16)
2. Noncriminal investigative, 708(b)(17)
3. Internal, predecisional deliberations, 708(b)(10)
4. Personal identification information, 708(b)(6)
5. Public safety, 708(b)(2) & Personal security, 708(b)(1)

Criminal Investigative Exemption

Section 708(b)(16) allows agencies to withhold:

- “A record of an agency relating to or resulting in a criminal investigation”
- Investigative materials, notes, correspondence, videos & reports
- Identity of a confidential source
- Victim information
- Records that would:
 - Reveal the institution, progress or result of a criminal investigation except the filing of criminal charges;
 - Impair the ability to locate a defendant; or
 - Hinder an arrest, prosecution or conviction

Criminal Investigative Exemption

Section 708(b)(16) does NOT allow agencies to withhold:

- Private criminal complaints – these are **public**
 - Typically obtained from the county district attorney
- Police blotters – these are **public**
 - If you want police blotter information, use the term “police blotter”
 - Definition is in 18 Pa.C.S. § 9102: A “chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses”

Police Policies & Training Records

Policies & training records are often public, at least in part

- Police department policies
 - Including department-wide training requirements
 - Some policies may be redacted under 708(b)(1), (2) or (3)
- Individual officer training records may be available
 - *Bucks County Courier Times* (April 19, 2019): “A veteran New Hope police officer who shot and wounded a Pipersville man after confusing his stun gun with his Glock 22, had not been re-certified in the use of his police-issued Taser since at least 2016, according to a review of records obtained by this news organization.”

Appealing Denials From a Local Law Enforcement Agency

Certain appeals go to the local District Attorney:

- Section 503(d)(2): “The district attorney of a county shall designate one or more appeals officers to hear appeals ... relating to access to criminal investigative records ... of a local agency of that county”
 - This alternative appeal process only applies to denials based on 708(b)(16).
 - However: OOR always **transfers** such cases to the DA.
 - Appealing to OOR never hurts; sometimes OOR & DA have joint jurisdiction.
- OOR hears all cases involving Pennsylvania State Police

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](#)

Public Safety Exemption

Section 708(b)(2) allows agencies to withhold:

- Records “reasonably likely to jeopardize or threaten public safety or preparedness”

Noncriminal Investigative Exemption

Section 708(b)(17) allows agencies to withhold:

- Investigative materials, notes, correspondence & reports
- Identity of a confidential source
- Work papers underlying an audit
- Records that would reveal the institution, progress or result of an investigation, except:
 - Imposition of a fine or civil penalty
 - Suspension, modification or revocation of a license, permit, etc.
 - **Executed settlement agreement** (unless made confidential by a court)

Internal, Predecisional Deliberations

Section 708(b)(10) allows agencies to withhold:

- The “internal, predecisional deliberations of an agency”
 - Must be internal to agency; and
 - Must be prior to a decision; and
 - Must be deliberative in nature
 - *Factual information (e.g., numerical data) cannot be withheld with this exemption – even if surrounding material must be redacted*
- Budget & legislative strategies
- *Finnerty vs. Department of Community and Economic Development (2021)*
 - Documents exchanged with an outside consultant are not exempted as “internal deliberations”

Personal Identification Info Exemption

Section 708(b)(6) allows agencies to withhold:

- Social Security number, driver's license number
- Personal financial information
- Personal telephone number & email address
 - Unless held out to the public
- Marital status, spouse's name, dependent info
- Home address of a judge or police officer

Personal Security Exemption

Section 708(b)(1) allows agencies to withhold:

- Records “reasonably likely to result in a substantial and demonstrable risk of physical harm to ... an individual.”
- [2019-0215](#): Request sought records related to ShotSpotter
 - Digital data incl. timestamps, locations, audio clips
 - Appeal granted in part, denied in part, transferred in part
 - Currently pending in Allegheny County Court of Common Pleas

How to File a RTKL Request

How to File a RTK Request

Submit your RTK request to the [correct agency](#)

- Submit requests to the agency that has the record
 - Rarely the OOR – we receive >900 misdirected requests every year
- Address requests to agency's RTKL officer
- Database of RTKL officers available on OOR website



The screenshot shows a web form titled "Open Records Officer Search". It features 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: a blue "Search" button and a white "Reset" button with a grey border.

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"/>	

More About Agency RTKL Officers

Many agencies, but not all, have a single RTKL officer

- Commonwealth agencies: DEP, DCNR, DOC, DCED, etc.
- Some agencies have separate RTKL officers by bureau, dep't, etc.
 - e.g., Philadelphia has approximately 40 separate
- Important to send request to the right RTKL officer
 - If not sure, say so: "If this request is misdirected, please let me know so I can withdraw it and direct it to the proper RTKL officer."

How to File a RTK Request

Some basic steps:

- Use the appropriate form to request records
 - Agencies must accept the OOR's Standard RTK Request Form
- Be **specific** when describing records: subject matter, date(s), type of record, sender and/or recipient, etc.
- **Note the request date to track timing of response**

How to File a RTKL Request

OOR Standard RTK Request Form, part 1



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: _____ (Attn: AORO)

Date of Request: _____ Submitted via: ☐ Email ☐ U.S. Mail ☒ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: _____ Company (if applicable): _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Email: _____

Telephone: _____ Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☐ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

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City: _____ State: _____ Zip: _____ Email: _____

Telephone: _____ Fax: _____



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How to File a RTKL Request

OOOR Standard RTK Request Form, part 2

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)
☐ Yes, electronic copies preferred if available
☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☐ No
RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.
Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☐ \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____
30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____
Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$ _____
☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

*NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>*

Form updated Feb. 3, 2020

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OOR Standard RTK Request Form, part 2

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)
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☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

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Form updated Feb. 3, 2020

Timeline of a RTKL Response

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
 - Allow additional 3 business days for postal mail before filing appeal
- Agency can extend timeline by 30 calendar days
 - Must be done in writing within the initial 5 business days
 - Any other extension must be agreed to by requester & in writing
- Track all **dates & deadlines** in case you need to appeal

Deadlines for Responses Only

Agency must respond in 30 days, not produce records

- Must provide reasonable production schedule
- If production of granted records is delayed, may appeal to OOR

Tracking Dates: An Example

Oscar Olsen v. Local Agency

- Aug. 1, 2019 – request made (on a Thursday)
- Aug. 8, 2019 – agency took 30-day extension (to Sept. 7)
 - Sept. 7 is a Saturday, so deadline moves to Monday, Sept. 9
- Sept. 12, 2019 – agency emails, asks for 30 more days
 - Requester emails back, says that's fine
- Oct. 1, 2019 – agency issued response (denied in part)
- Oct. 1, 2019 – requester filed appeal with OOR
 - Request was deemed denied on Sept. 9; appeal was due on Sept. 30
 - OOR has no choice but to dismiss appeal as untimely

Agency Response: Costs & Format

OOB fee schedule developed pursuant to RTKL

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

Agency Response: Denials

If an agency denies a request, it is required by the RTKL to:

- Provide the denial in writing
- Explain what records are being withheld
- Explain why records are being withheld
- Explain how to appeal the denial
- Failure to respond by the statutory deadline is a “deemed denial” & can be appealed

How to Appeal a Denial

Appealing a RTKL Denial

Most denials can be appealed to the OOR

- Denied requests can be appealed within **15 business days** of mailing date of denial
- Most appeals filed with the OOR
 - Not Attorney General, Auditor General, Treasurer, General Assembly
 - Not Courts (requests & appeals governed by Rule of Judicial Administration 509)
 - Denials from local agencies appealed to county DA only if they claim criminal investigation exemption (but PSP denials appealed to OOR); if multiple exemptions cited, appeal could be split between DA and 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
- Only need to complete the form – can make argument later
- No lawyer necessary
- OOR assigns Appeals Officer to oversee case
- Both sides can present evidence & argument
- OOR has **30 calendar days** to issue Final Determination

OOR – Online Appeal Form

FILE AN APPEAL

Requester

Name:

First Name

Last Name

Company:

Company Name (if applicable)

Address:

Address 1

Address 2

City

Pennsylvania

x ▼

Zip

Contact:

Phone

Email

Agency:

▼

Type Agency Name if not in list

Agency Address:

Address 1

Address 2

City

Pennsylvania

x ▼

Zip

Agency Contact:

Phone

Email

OOR – Online Appeal Form

Records at Issue in this
Appeal:

(If you run out of space, you may attach a file with more details.)

Request Submitted to
Agency Via:

Dates:

Date of Request



Date of Response



☐ Check if no response

Agency Open Records
Officer:

Name & Title of Person Who Denied Request (if available)

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

OOR – Online Appeal Form

Attach Files: [Browse ...](#)

[+ Add](#) [Remove All](#)

Maximum file attachments: 10
Maximum file size: 25MB per attachment
Allowed file types: pdf, doc, docx, rtf, txt, xls, xlsx, ppt, pptx, jpg, png, gif, bmp, tiff
*File names may not contain the following characters: \ / : * ? " < > |*

☐ I have attached a copy of my request for records.


☐ I have attached a copy of all responses from the Agency regarding my request.

☐ I have attached any letters or notices extending the Agency's time to respond to my request.

☐ I hereby agree to permit the OOR additional time to issue a final determination: 30 Days ▼

☐ I am interested in resolving this issue through OOR mediation. *(This stays the initial OOR deadline for the issuance of a final determination by 7 business days. If mediation is unsuccessful, the OOR has 30 days from the conclusion of the mediation process to issue a final determination.)*

PUBLIC RECORD NOTICE: All filings with the Office of Open Records will be public records and subject to public access with limited exceptions. If you do not want to include personal contact information in a publicly accessible record, please provide alternate contact information.

☐ I'm not a robot  [Privacy](#) - [Terms](#)

[Submit](#) [Reset](#)

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After Appeal is Filed

Similar to an informal court proceeding

- Requester only required to submit basic info, but may choose to provide brief with legal arguments and point to specific evidence
- The conducting of a hearing is extremely rare

OOR appreciates extensions whenever possible

- Some appeals are complicated and require more extensive research
- Heavy workload
- This may allow the establishment of a briefing schedule, allowing agency to respond to requester's arguments

If you want to become involved in appeal...

Try to consider what would help the appeals officer

- Refute each exemption raised by agency, ideally with specific court cases or previous OOR final determinations
- Point to specific evidence to demonstrate an agency's factual assertions may be incorrect
- Submit an affidavit if trying to utilize factual information to demonstrate an agency may be wrong
- If agency cites new or additional reasons for denial, ask for an opportunity to respond

Do you need a lawyer in order to appeal?

Absolutely not

- Thousands of appeals are successfully appealed every year without the requester utilizing an attorney
- An organized requester who keeps careful track of all dates and deadlines is all that is needed
- If you have access to an attorney, can be helpful in more complicated situations or to reduce work for requester

After the OOR's Final Determination

Two options

- If you believe the OOR made an error, can request Petition for Reconsideration within 15 days of FD mailing
 - Cannot submit new evidence
 - OOR responds within 30 days
- Agency or requester may appeal FD to court within 30 days of FD mailing; stays record request
 - Local agency ☐ Court of Common Pleas
 - State agency ☐ Commonwealth Court



10 Tips and Best Practices

Tip 1: Brainstorm First and Do Your Research

- What do you want to know?
- What kinds of records are you seeking?
- Who would have those records?
- Some records may already be publicly available.
- Doing your research also prepares you to fight a denial.

Tip 2: Specificity is Key

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”)

RECORDS REQUESTED

The number of individuals who were held at the Blair County Prison as of the first day of the month for the past twelve months (September 2018 to September 2019).

The breakdown of those total population numbers by the number of individuals who were awaiting trial, the number of individuals who were already sentenced, and the number of individuals who were held for failure to pay child support or some other financial obligation.

A further breakdown of the number of people awaiting trial who were held on each of the following:

- A. detainer(s) (including but not limited to probation and parole detainers and warrants, out of state warrants, and Immigration and Customs Enforcement detainers);
- B. a detention order (i.e. where bail has been denied) or where bail has been revoked, or;
- C. an unpaid monetary condition of bail.

Any and all monthly or annual reports created by the Montgomery County Correctional Facility (MCCF) regarding statistics and/or information on MCCF from January 1, 2020 to the present.

Tip 3: Anticipate Exemptions

- Only request records that exist.
 - Be cautious in asking for lists. Agencies are not required to create a list that doesn't exist, unless it's a database pull.
 - Although sometimes an agency will produce records they don't have to.
- Beware of the Criminal History Record Information Act 18 Pa.C.S. § 9102.
 - Don't ask for investigative records.
 - Largely in line with the criminal investigation exemption.

Tip 4: Provide Context and Remind the Agency of Specific Provisions in the RTKL

- Delivering records electronically
- Original format
- Redactions
- Government contractors
- Information in databases

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.patreaury.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

Tip 5: Consider Sending Multiple Requests Simultaneously

- Might avoid getting all requests bogged down by one or two controversial ones
- Also helps avoid a protracted timeline

Tip 6: Keep Track of Deadlines and Stay Organized

Missing a deadline can curtail all of your efforts

- If an agency doesn't respond at all within five days, the onus is on the requester to appeal within 15 days of the day the response was due
- Multiple emails, different senders
- Keep track of any and all communication for the appeal

Tip 7: Engage with the RTKL Officer

- They may want to better understand your request, which can help reduce the timeline.
- Cannot ask you why you are making a request

Tip 8: The Appeals Process May Be a Necessary Push to the Agency

- Sometimes an agency will deny the request without having conducted a thorough search.
- After you file the appeal, you can always stay (or pause) the appeal to negotiate with the lawyer representing the agency.

Tip 9: Try to Work Out a Briefing Schedule with the OOR Appeals Officer and Agency

- OOR will set a deadline for submissions that applies to both sides
- A staggered briefing allows both sides to make arguments that respond to each other
- Always ask to have the last word in a reply

Tip 10: Frustrating Responses Are Not the End

Rethink the request

- Different format?
- Different agency?
- Is the information not collected?

Consider if the agency should have redacted portions of the records

- As part of appeal, can ask for agency to redact nonpublic portions of record rather than deny access to entire record

Communicate with the RTKL Officer and understand the basis for denial



Q & A

Additional Resources

- www.OpenRecords.pa.gov
 - Citizens Guide
 - Agency Guides
 - Final Determinations and Key Court Decisions
- Open Records Officer Guidebook
- On Site Training = RA-DCOORTRAINING@pa.gov

Thank You!

- Twitter Feed = @OpenRecordsPa
- OOR Phone = 717.346.9903
- ACLU of Pennsylvania Twitter = @aclupa
- Andrew Christy at the ACLU of Pennsylvania:
achristy@aclupa.org

Overtime

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**

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

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

RTKL includes an 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 RTKL's "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”)

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 RTKL's definition of a "record"...