

OFFICE OF THE BUDGET

RIGHT TO KNOW LAW POLICY

(Effective for all Right to Know Law Requests
received on or after June 1, 2014)

Pursuant to Section 504 of the Right-to-Know Law, 65 P.S. §67.101 et seq. (RTKL), the Commonwealth of Pennsylvania's Office of the Budget ("OB") sets forth the following policies, process, and procedures regarding responses by OB to requests made to it pursuant to the RTKL, in addition to complying with the policies set forth in Management Directive 205.36.

Management Directive 205.36 is available at:

http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_785_711_0_43/http%3B/pubcontent.state.pa.us/publishedcontent/publish/global/files/management_directives/management___administrative_support/205_36.pdf

OB's RTKL Policy is available from its website at <http://www.budget.state.pa.us>.

This policy applies only to the Office of the Budget. It does not apply to: the Office of the Governor; the Office of the Lieutenant Governor; the Office of General Counsel; the Office of Administration; the Office of Inspector General; the Pennsylvania Human Relations Commission; the Pennsylvania Commission on Crime and Delinquency; or, any other office within the Governor's Executive Offices. Each of these other offices or agencies has its own separate RTKL policy.

To facilitate access to documents of public interest and reduce the need for RTKL requests, OB makes some documents public. DGS publishes many solicitations, awards and contracts on its website at <http://www.emarketplace.state.pa.us/>. Pursuant to the requirements of Chapter 17 of the RTKL, 65 P.S. §§ 67.1701-1702, OB's contracts of \$5,000.00 or more are available from the Pennsylvania Treasurer at <http://www.patreasury.org/eContracts.html>. OB may also make other public records available on its website as it deems appropriate.

I. RTKL REQUESTS

- A.** A written request to OB under the RTKL **must**:
1. Be addressed to OB's Agency Open Records Officer ("AORO") at:

Daniel Sharar
Agency Open Records Officer
Office of the Budget
Commonwealth of Pennsylvania
Forum Place – 9th Floor
555 Walnut Street
Harrisburg, PA 17101
Telephone: 717-787-6496
FAX: 717-787-3376
EMAIL: OBRightToKnow@pa.gov
 2. Identify a name and address to which OB should address its response;
 3. State that the request is being made pursuant to the RTKL;
 4. Be submitted to the AORO in person, by United States mail, by e-mail, or by fax as directed above;
 5. Be sufficiently specific to enable OB to ascertain which records are being requested; and
 6. Be from a person that is a legal resident of the United States.
- B.** While OB may fulfill verbal RTKL requests, the requester cannot pursue the relief and remedies provided under the RTKL unless the request is made in writing.
- C.** RTKL requests may be on the form available at the website of the Office of Open Records at <http://openrecords.state.pa.us>.
- D.** The regular business hours of OB's RTKL Office are Monday through Friday, 8:30 AM to 5:00 PM local time in Harrisburg, Pennsylvania, except for those days on which OB is closed due to a state holiday or at the direction of the Governor. Any RTKL request received by OB's RTKL Office after the close of regular business hours shall be deemed to have been received by that office on the next day that OB is open for regular business.
- E.** RTKL requests received by OB are considered to be "public records," and OB may post the RTKL requests it receives on its website (www.budget.state.pa.us).

II. RESPONSES

OB's AORO may respond by providing a requester with access to inspect a record electronically or as otherwise maintained by OB by: 1) providing access in OB's offices, 2) sending a copy to the requester, or 3) notifying the requester that the record is available through publicly accessible electronic means and, if the requester writes to OB within 30 days that the requester is unable or unwilling to access the information electronically, by then providing the records in paper format, upon payment by the requester of all applicable RTKL fees. Each of these options is a "response" for purposes of the RTKL, as is OB's written notice to the requester granting, denying, or partially granting and partially denying access to a record. OB may send written responses to requesters by United States mail, by hand (in person or by delivery service), by facsimile or, by e-mail.

Unless a longer period of time is needed and communicated to the requester by an "interim response" (as discussed in paragraph A below), the RTKL requires that OB respond to an RTKL request within five business days. For purposes of determining the end of the five business (5) day period, the day that a RTKL request is received is not counted. The first day of the five business day period is OB's next business day after it is received.

A. Interim Responses.

OB must provide a final response to a RTKL request within five (5) business days unless one or more specific conditions are satisfied and the AORO gives the requester written notice that additional time will be required. That notice is referred to as an "interim response."

The AORO may send an interim response if any of the following apply:

1. The RTKL request requires redaction of a public record;
2. The RTKL request requires retrieval of a record from a remote location;
3. A response within the five (5) business day period cannot be accomplished due to bona fide staffing limitations, which limitations must be specified in the interim response;
4. Legal review is necessary to determine whether the record requested is subject to access under the Act;
5. The requester has not complied with OB's policies regarding access to public records;
6. The requester has not complied with a demand by OB's AORO for prepayment of fees, which are required to fulfill the RTKL request and which are estimated to exceed \$100; further, if prepayment of fees is required by OB, the time period for response shall be tolled from the time the demand for payment is made until such time as payment is actually received; or

7. The extent or nature of the request precludes a response within the required time period.

An interim response must: 1) be sent to the requester on or before the last day of the five (5) business day period; 2) state that the request is being reviewed and the reason for the review; 3) provide an estimate of applicable fees owed when the record becomes available; and 4) state a reasonable date that a response is expected to be provided. This date must not be more than 30 calendar days from the end of the five (5) business day period.

If the date of an expected response is in excess of 30 days following the five days allowed for in Section 901, the request will be deemed denied unless the requester has agreed in writing to the date specified in the notice.

OB will send an interim response when the estimated fee for responding to the request is in excess of \$100. Once the estimated payment is received, OB will proceed to: 1) make a final determination as to what records, if any, are public records under the RTKL; 2) begin search and retrieval of those records; 3) perform any required redaction; and, 4) advise the requester, within 30 days, as to a date by when any responsive public records will be produced. Failure to make an estimated payment by the date required by OB in its interim response will result in the request being deemed withdrawn.

B. Final Responses.

There are three possible final responses: 1) the request is granted; 2) the request is denied; or 3) the request is granted in part and denied in part. The failure to make a timely response is deemed to be a denial.

If a written request is denied in whole or in part, OB will issue a final written response that will include an explanation of the procedure for the requester to appeal, if the requester chooses to do so. The written denial will also set forth the specific reasons for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that that the record requested is exempt from disclosure, the specific reasons for OB's determination shall be included.

Non-production of records due to the fact that a good faith search by OB does not produce any responsive records is not a denial of access.

C. Redaction

OB will not deny access to a record based upon the fact that portions of the record are not public records and, as a result, not subject to disclosure. OB will redact the portions that are not public records and produce the portions that are public records.

D. Access

OB may provide a requester with access to inspect a record electronically or as otherwise maintained by OB by: 1) providing access to the record(s) in OB's offices; 2) sending a copy to the requester; or, 3) notifying the requester that the record is available through publicly accessible electronic means.

Under the RTKL, all persons or entities must pay all applicable RTKL fees before receiving access of any kind to records pursuant to the RTKL. 65 P.S. § 67.901. OB will not provide any requestor with access to any public record until OB has first received payment from the requestor of all of the applicable RTKL fees due in connection with his/her RTKL request. Acceptable forms of payment for RTKL fees are a money order, a certified check, a cashier's check, or an ordinary personal or business check. OB will not accept cash for payment of RTKL fees. If payment is made by an ordinary personal or business check, then OB will only consider the payment to have been received once the check clears the requester's account, and the requester's funds have been deposited in the Commonwealth's account. OB will hold the requested records until an ordinary personal or business check fully clears the requester's account and the Commonwealth has received the requester's funds. Upon receipt of the requester's payment, OB will at the requester's choice either deliver the requested record to the requester via the United States Mail, or the requester may pick up the requested records in OB's offices during regular office hours.

OB has the discretion to determine the building(s) and room(s) that will be used to provide a requester with access to OB's public records. The selection of buildings and rooms for access to OB's public records is a matter within the discretion of OB's AORO.

OB will provide a public record to a requester in the medium requested if the record exists in that medium. Otherwise, the public record must be provided in the medium in which it exists. If a public record only exists in one medium, OB is not required to convert that public record to another medium, except that if the public record is only available in an electronic form, OB must print it out on paper if the requester so requests.

OB is not required to create a public record that does not already exist. OB is not required to compile, maintain, format, or organize a public record in a manner in which OB does not currently do so.

E. Duplication of Public Records.

OB may either make copies of the requested records itself or, in its discretion, allow the requester to bring the necessary equipment to make its own copies of the requested records. OB, in its discretion, may: make its duplication equipment available to a requester, and may either require that the requester operate the equipment, or may assign OB staff to make the duplications; or, contract for duplication services and require the requester to pay the applicable rate.

III. APPEALS

When a request is denied or deemed denied, whether in whole or in part, the requester may file an appeal with the Commonwealth of Pennsylvania's Office of Open Records. The appeal must be filed within 15 business days of the date of OB's denial or deemed denial of the requestor's request. The appeal must state the grounds upon which the requester asserts that the record is public, and should address any grounds stated by OB for its delay, partial denial, complete denial, or deemed denial of the request. The appeal shall be sent to the Office of Open at the address set forth below and simultaneously to OB's AORO, in the same manner as the appeal is sent to the Office of Open Records (e-mail, fax, U.S. Mail, or hand delivery) with: 1) OB's response; 2) the original RTKL request; and, 3) the completed appeal form available from the Office of Open Records website at:

<https://www.dced.state.pa.us/public/Office of Open Records/appealformgeneral.pdf>

The requestor's appeal shall be sent to:

Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
Phone: 717-346-9903
Email: openrecords@pa.gov

A person other than OB or the requester, with a direct interest in the record that is subject to an appeal, has 15 days following actual knowledge of the appeal, but no later than the date that the Office of Open Records' Appeals Officer issues an order, to file a written request to provide information or to appear before that Appeals Officer in support of the requester's or OB's position in the appeal. The Appeals Officer may, but does not need to, grant the request.

For further information on appeals, requesters must go to the website of the Office of Open Records at <http://openrecords.state.pa.us>.

IV. FEES

Applicable fees to be charged by OB under the RTKL are as follows.

A. Fees Determined by the Office of Open Records

Under the RTKL, the Office of Open Records has the authority to establish two fees for Commonwealth agencies: Duplication, 65 P.S. §67.1307(b); and, Enhanced Electronic Access (an agency may establish user fees, subject to approval by the Office of Open Records), 65 P.S. §67.1307 (e).

The fees for duplication are established by the Office of Open Records, as posted on its website at <http://openrecords.state.pa.us>. Unless otherwise directed by statute, OB will charge \$.25 per page for duplication, although on-site duplication may be at a reduced rate of \$.15, at the sole discretion of OB. OB does not have any records available via enhanced electronic access.

Pursuant to this RTKL policy, OB may waive duplication fees for 20 pages or less. Duplication charges are to be paid for any duplication of 21 or more pages.

B. Specialized Fees

1. OB will charge \$1 per copy for certified copies, when requested by the requester.
2. OB will charge the actual cost for postage, facsimile/microfiche or other media, as well as for specialized documents, except that postage fees will be waived for postage that costs under \$1.00.
3. Special rules apply to fees for transcripts of administrative proceedings:
 - (i) Prior to an adjudication becoming “final, binding and non-appealable,” transcripts may be requested through an agency, however the stenographer or court reporter is permitted to charge the regular fee for this service.
 - (ii) Following an adjudication becoming “final, binding and non-appealable,” a request for the transcript shall be treated like any other request for a record and the usual duplication fee of up to \$.25 per page will be charged.

C. Reasonable and Necessarily Incurred Costs

As expressly provided by 65 P.S. §67.1307(g), OB has the authority to charge requesters reasonable fees for necessarily incurred costs. OB will determine and charge such fees on a case by case basis.

D. General Fee Provisions

No charge shall be made for agency or legal review of the record to see whether the requested records are public records that are subject to production.

If the estimated fees that are required to fulfill the RTKL request exceed \$100, it may be necessary for the requester to pay the estimated amount in advance, either by certified check or by ordinary check, which must first have cleared to be considered received by OB. The demand for prepayment may specify a reasonable period of time in which the requester must make such prepayment. If the requester fails to make prepayment within the specified time, OB is not is not required to produce the records requested.

All applicable fees must be paid in order to receive access to the record requested. 65 P.S. §67.901. Any requester who has unpaid amounts outstanding to OB (or to any other agency under the Governor's jurisdiction in relation to RTKL requests where production was made by any such agency) will not be granted access to records under other RTKL requests until such prior amounts due have been paid in full.

When an estimated fee was not required to be paid because the estimate was \$100 or less, but actual fees are over \$100, or where the fee was under \$100, OB has the discretion to produce the records and invoice for the amount due or to require payment prior to production.