

OFFICE OF THE BUDGET

RIGHT-TO-KNOW LAW POLICY

(Effective for all Right-to-Know Law Requests
received on or after December 20, 2021)

Pursuant to Section 504 of the Right-to-Know Law (RTKL), 65 P.S. § 67.101 et seq. and in compliance with the policies set forth in [Management Directive 205.36, Right-to-Know Law Compliance](#) (PDF), the Commonwealth of Pennsylvania, Office of the Budget (OB) sets forth the following policies, process, and procedures regarding responses by OB to RTKL requests.

This OB RTKL Policy is available at <https://www.budget.pa.gov/>.

This policy applies only to OB. Any other Commonwealth Agency or office within the Governor's Executive Offices may have its own separate RTKL Policy.

To facilitate access to documents of public interest and reduce the need for RTKL requests, some documents are already available to the public electronically on OB's website under [Publications and Reports](#). The Commonwealth of Pennsylvania, Department of General Services (DGS) publishes many solicitations, awards, and contracts on its [eMarketplace website](#). Pursuant to Chapter 17 of the RTKL, 65 P.S. §§ 67.1701-1702, Commonwealth contracts of \$5,000.00 or more are available at [the Pennsylvania Treasurer's website](#). 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 meet **all** the following requirements:

1. Be addressed to the OB Agency Open Records Officer (AORO) at:

Kraig Kiehl
Agency Open Records Officer
Office of the Budget
Commonwealth of Pennsylvania
Forum Place – 9th Floor
555 Walnut Street
Harrisburg, PA 17101
Telephone: 717-214-0059
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 U.S. mail, by email, or by fax as directed above.
 5. Be sufficiently specific to enable OB to ascertain which records are being requested.
 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 Office of Open Records \(OOR\) website](#) (PDF).
- D.** The regular business hours of OB's RTKL Office are Monday through Friday, 8:30 a.m. to 5:00 p.m. 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 "public records," and OB may post the RTKL requests it receives on the [OB website](#).

II. RESPONSES

The RTKL requires OB to respond to an RTKL request within 5 business days. In determining the 5 business day period, the day that the RTKL request is received is not counted. Accordingly, the 5 business day response period begins the business day after the request was received.

The AORO may respond to the request by granting access to the record sought; seeking additional time or fees through an Interim Response; or preparing a written Final Response granting, denying, or granting in part and denying in part the request. Each of these options is a "response" for purposes of the RTKL. The AORO may send written responses to requesters by United States mail, in person, delivery service, fax, or email.

A. Interim Responses.

OB must provide a Final Response to a RTKL request within 5 business days unless one or more specific conditions are satisfied and the AORO gives the requester and Interim Response of written notice that additional time will be required.

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 5-business-day period cannot be accomplished due to bona fide staffing limitations, which 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 the AORO for prepayment of fees, which are required to fulfill the RTKL request and which are estimated to exceed \$100. If prepayment of fees is required by the AORO, 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.
7. The extent or nature of the request precludes a response within the required time period.

An interim response must meet **all** the following requirements:

1. Be sent to the requester on or before the last day of the 5 business day period.
2. Explain 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.
4. Give a reasonable date that a response is expected to be provided that is not more than 30 calendar days from the end of the 5 business day period.

If the date of an expected response is in excess of 30 calendar days following the 5 business 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.

If OB determines that estimated fees for responding to the request exceed \$100, OB will send an interim response demanding prepayment of those estimated fees. Until the estimated fees are received the time period for the final response is tolled. Failure to make the estimated prepayment by the date required by OB in its interim response will result in the request being deemed withdrawn. OB will issue a final response once prepayment is received.

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. Instead, OB will redact the portions that are not public records and produce the portions that are public records.

D. Access

The AORO may grant access to a requested record by (1) providing the requester an opportunity to access the record at OB's offices, (2) sending a copy of the record to the requester, or (3) notifying the requester that the record is available through publicly accessible electronic means. If the requester writes to OB within 30 days that the requester is unable or unwilling to access the information electronically, then OB shall provide the record in paper format, after requester has paid all applicable RTKL fees.

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 requester with access to any public record until OB has first received payment from the requester in United States currency of all applicable RTKL fees due in connection with the RTKL request. Acceptable forms of payment for RTKL fees are a money order, a certified check, a cashier's check, or a personal or business check. OB will **not** accept cash, cryptocurrency, or any other alternative payment method for payment of RTKL fees.

If payment is made by a personal or business check, 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.

Upon receipt of the requester's payment, OB will deliver the requested record to the requester via the United States Mail, or the requester may choose to 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 the 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. 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 OOR), 65 P.S. § 67.1307(e).

The fees for duplication are established by OOR, as posted on its website at openrecords.pa.gov. Unless otherwise directed by statute, OB will charge

\$0.25 per page for duplication, although on-site duplication may be at a reduced rate of \$0.15, 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 determine 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 time in which the requester must make such prepayment. If the requester fails to make prepayment within the specified time, OB 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.

IV. 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, Office of Open Records (OOR). The appeal must be filed within 15 business days of the date of OB's denial or deemed denial of the requestor's request. OOR encourages requesters to submit appeals through the [online version of the official OOR Appeal Form](#). Alternatively, OOR accepts appeals using the official [OOR Appeal Form](#) (PDF), which may be submitted by U.S. mail, in-person, delivery service, fax, or email addressed to:

Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: 717-346-9903
Fax: 717-425-5343
Email: openrecords@pa.gov

The appeal must state the grounds upon which the requester asserts that the record is public and respond to any grounds stated by OB for its delay, partial denial, complete denial, or deemed denial of the request. The appeal must include (1) the completed OOR Appeal form (online or pdf version); (2) a copy of the original RTKL Request; and (3) a copy of OB's response(s) to the RTKL Request. The Requester must simultaneously send the appeal, with the attached documents, to the OB AORO in the same manner as the appeal was sent to OOR.

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 OOR 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 should go to [OOR's website](#).