

Pennsylvania Right-to-Know Law¹

Taken together, the Sunshine Act² and the Right-to-Know Law, often referred to as the Open Records Law, are intended to provide residents of the Commonwealth with first-hand knowledge of the activities of public agencies taken at meetings and access to contents of public records.

The original version of the Right-to-Know Law, enacted in 1957 and amended extensively by Act 100 of 2002, was repealed and replaced by Act 3 of 2008. The earlier versions of the Right-to-Know Law were designed to permit the examination, inspection, and duplication of defined “public records” of “public agencies.” Act 3 of 2008, hereinafter referred to as “the Law,” expands these rights and makes fundamental changes to the transparency of governmental operations in Pennsylvania. Most notably:

- The rights under the Law are extended to any legal resident of the United States and other defined “agencies.”
- Any record in the possession of a “Commonwealth agency”³ or a “local agency”⁴ is presumed to be public. Similarly, defined legislative records of legislative agencies and financial records of judicial agencies are also presumed to be public. Such records are

¹ Act 3 of 2008 (65 P.S. § 67.101 et seq.). The Right-to-Know Law discussed herein is not to be confused with the Worker and Community Right-to-Know Act, 35 P.S. § 7301 et seq., an act that, among other things, requires the chemical identification of substances in the community and on employer premises. Federal law dealing with the movement and storage of hazardous materials is also often referred to, colloquially, as the Right-to-Know Law.

² 65 Pa.C.S. § 701 et seq., also referred to as the Open Meetings Law.

³ “Commonwealth agency” is defined as any of the following:

- (1) Any office, department, authority, board, multistate agency or commission of the executive branch, an independent agency and a State-affiliated entity. The term includes:
 - (i) The Governor’s Office.
 - (ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
 - (iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.
- (2) The term does not include a judicial or legislative agency.

Right-to-Know Law, § 102.

⁴ “Local agency” is defined as any of the following:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

Right-to-Know Law, § 102.

shielded from disclosure only if the record is specifically exempt under the Law, protected by a privilege, or exempt from disclosure under another law or by judicial order or decree.⁵

- The burden of proving that a record is not public is on the agency denying access to the record.

Pennsylvania municipalities (a type of “local agency”) are subject to broad disclosure requirements under the new Right-to-Know Law. Whereas the previous Right-to-Know law defined “public records” primarily as records documenting the receipt or expenditure of public funds and a “minute, order, or decision” of the municipality, the new Law requires that municipalities disclose any information, regardless of its format, “that is created, received or retained pursuant to law or in connection with a transaction, business or activity”⁶ of the municipality, unless the record is exempt by law, privilege, or judicial order or decree.

The Law imposes administrative requirements on all agencies. Each agency must maintain an “open records officer” and must post information related to open records requests at its physical location and on its website if it maintains one. The open records officer is the designated agency administrator of requests under the Law.

Access

If a record is subject to disclosure, it must be provided in the medium (i.e., paper or electronic form) requested if it exists in that medium. An agency may fulfill named or anonymous written (including e-mailed or faxed) or verbal requests. Upon receipt, agencies generally have five business days to respond to a request unless certain legal or logistical grounds exist to extend the time. If the agency does not respond within five days or within an extension as provided by the Law, the request is deemed denied.

An agency may charge for duplication, certification, postage and enhanced electronic access.⁷ An agency is explicitly prohibited from charging fees other than those authorized by law. Municipalities and other “local agencies” are required to use the duplication fee schedule promulgated by the Open Records Office. Prepayment of fees is required prior to providing records if the fees are expected to exceed \$100.

Exemptions

As previously mentioned, the Law contains a list of exemptions at Section 708. The exemptions include documents that could affect private safety or public or infrastructure security, certain internal draft documents and academic materials, certain trade secrets, collective bargaining and

⁵ See Right-to-Know Law, § 305.

⁶ Right-to-Know Law, § 102.

⁷ *Id.* § 1307.

personnel information, medical history, and certain private personal information. Because the exemption provision of the Law covers a spectrum of information beyond the scope of this article and permits access to certain subsets of otherwise exempt types of records, municipal officials should carefully review the Law when determining whether an exemption applies to a requested record. An agency must redact exempt materials from a requested record that is otherwise subject to disclosure and provide the redacted document to the requester.⁸

The Law also provides that a record may be exempt if other federal or state law prohibits disclosure. A court may also prohibit a record from being disclosed.

Office of Open Records

The Law establishes the Office of Open Records within the Pennsylvania Department of Community and Economic Development.⁹ The Office is charged with providing information, training, and advisory opinions related to the Law. *The Office also acts as the forum for appeals from decisions of Commonwealth agencies and local agencies, including municipalities, under the Law.*¹⁰ The Office may resolve disputes through a mediation program in addition to formalized appeal hearings. The Office maintains a website, <https://www.openrecords.pa.gov/>, which contains a wealth of information about the Law.

Appeals, Fees, and Penalties

It is important to note that although an agency is permitted to respond to verbal requests, **a requester can avail him/herself of the right to appeal from an agency decision only if he/she first makes a written request for a record.** In the case of an explicit or a deemed denial, a requester has 15 business days from the mailing date of the denial, or the date of the deemed denial, to appeal to the agency appeals officer.¹¹ The appeals officer has 30 days upon receipt of an appeal to render a final decision.¹² Within 30 days of mailing the appeal decision, a request for a subsequent review by a court may be made.¹³ Notice of appeals to court must be provided to

⁸ Right-to-Know Law, § 706.

⁹ *Id.* § 1310.

¹⁰ Act 77 of 2020 requires the Office to “publish guidelines for a Commonwealth agency specifying how the Commonwealth agency is required to respond to a request for records made during a disaster declaration when the Governor has ordered the Commonwealth agency to close the Commonwealth agency’s physical location.” The guidelines may be accessed on the Office website.

¹¹ Right-to-Know Law, § 1101.

¹² If the appeals officer fails to render a decision within 30 days, the appeal is deemed denied. *See* Right-to-Know Law, § 1101(b)(2).

¹³ The request for judicial review is filed with the Commonwealth Court in cases related to a request of a Commonwealth agency, a legislative agency, or a judicial agency. In appeals from appeal orders involving local agency requests, initial judicial review is conducted by the court of common pleas. *See* Right-to-Know Law, §§ 1301-1302.

the agency, the requester, and the Office of Open Records or the designated appeals officer in accordance with court rules.

The Law provides that a reversal of an agency decision by a court may result in the awarding of attorney fees and costs to the requester if the agency acted in bad faith with wanton disregard for the Law, or in a manner based on an unreasonable interpretation of the Law.¹⁴ Conversely, the court may award fees and costs, or a portion thereof, to the agency if the court determines that the appeal was frivolous.

Agencies may incur civil penalties of not more than \$1,500 for denials made in bad faith. An agency or public official who does not promptly comply with a court order related to the Law is subject to a civil penalty of not more than \$500 per day until the records are provided.¹⁵

¹⁴ Right-to-Know Law, § 1304.

¹⁵ Right-to-Know Law, § 1305.