Sunshine Act & Right-to-Know Law Manual

A Compliance Guide for Township Officials

- Detailed summaries of the laws
- Explanations of your duties
- The text of the laws
- Updated sections on related court cases and final determinations

PSATS

PREPARED BY THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

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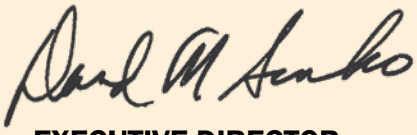
Preface

THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS (PSATS) HAS DEVELOPED THE FOLLOWING GUIDE *to help township officials better understand their obligations under Pennsylvania's Sunshine Act, which establishes rules for how townships must conduct public meetings, engage in deliberations, and take official actions, and the Right-to-Know Law, which requires townships to provide access to public records.*

In this 2023 edition, PSATS summarizes the laws and provides ideas for best practices to implement to ensure compliance with each law, sample policies and forms, new and updated summaries of court opinions and final determinations issued through January 2023, and the full text of each law.

This manual is intended to provide township officials with a general overview of each law and their responsibilities under them so they can be better prepared to meet the many challenges each law presents. However, the manual is not a legal document and should not be construed as such. You should always consult your solicitor if you have questions about how your township should handle an issue under the Sunshine Act or Right-to-Know Law.



EXECUTIVE DIRECTOR

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Who Must Comply?

The township's governing body and all township boards, commissions, councils, and authorities that take official action or render advice on matters of agency business are each considered an "agency" that must comply with the Sunshine Act. This means that townships must ensure that members of their zoning hearing boards, planning commissions, recreation committees, and other committees are aware of their obligations under the Sunshine Act and hold advertised meetings that are open to the public.

What Is a Meeting?

A meeting is "any prearranged gathering of an agency which is attended or participated in by a quorum of the members of the agency held for the purpose of deliberating agency business or taking official action." Thus, if there is no quorum present, then the gathering is not a meeting, and the Sunshine Act does not apply.

One or more members of township boards, committees, and commissions may participate in meetings remotely by telephone or through a computer-based meeting program and count toward the quorum *(certain other types of municipalities have physical quorum requirements)*. The members must be able to hear and communicate with everyone at the public meeting and vice versa.

Official Actions and Deliberations to Take Place at Meetings

The definition of what constitutes an official action of the agency is very broad and includes: 1) recommendations made by an agency pursuant to statute, ordinance, or executive order; 2) the establishment of policy by an agency; 3) decisions on agency business; and 4) votes taken on any motion, proposal, resolution, rule, regulation, ordinance, report, or order.

Deliberation is defined in the Sunshine Act as any discussion conducted for the purpose of making a decision. This language is somewhat ambiguous, which can make it difficult to determine when discussions cross the line and become deliberations. A general rule of thumb is that the more specific discussions get regarding township-related matters, especially matters that are on an upcoming township agenda, the more likely those discussions will be considered as deliberations.

Although the law requires that official actions and deliberations take place at public meetings, quorums of agency officials may still conduct certain activities outside of public meetings. For example, they may engage in "information gathering" or "fact-finding" sessions where they sit down with interested parties to hear their viewpoints on township-related matters, such as the proposed annual budget, or

ask questions to better educate themselves on an issue. But be careful when doing so because private gatherings may inadvertently turn into meetings. If a board of supervisors begins weighing pros and cons and debating, instead of just listening or asking for information, it may be engaging in deliberations that should take place in public *(pay particular attention to email and text exchanges).*

There are many court decisions that analyze the difference between information gathering and deliberating *(see pages 36–38),* but all of them are heavily dependent on the specifics of each situation. If your board does engage in private information gathering, it would be good practice to provide a report of its findings at a future public meeting.

Agency Business and Administrative Action

As stated above, the law requires that all "official action" on agency business take place at public meetings. Agency business is considered the "framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities." Official action for a board of supervisors includes actions, such as voting to approve purchases, or passing resolutions. Notably, agency business does not include administrative action.

"Administrative action" is the execution of policies that were previously authorized or required by the agency at a public meeting. For instance, if the board plans to vote on whether to install a sewer system in the township, that vote would be considered official action and must take place at a public meeting. However, once that official action is taken, the administrative details of carrying out the project, such as scheduling construction workers and working with the engineers, do not have to be discussed in public.

Another example of administrative action arises in the context of employee hirings and firings by the board *(as opposed to by someone delegated to perform that duty).* Letters confirming the hiring and firing of employees are administrative actions and must follow the official actions taken at public meetings.

Townships with township supervisors who are also employees must be especially careful to ensure that the line between administrative actions, which working supervisors can perform as employees, and official actions, which they must perform as elected officials, does not get blurred to avoid potential Sunshine Act violations. Township supervisors who are township employees must be mindful to keep separate their elected official and employee roles.

Township supervisors who are township employees must be mindful to keep their elected official and employee roles separate.

Agenda Requirements

The Sunshine Act requires townships to post meeting agendas for all advertised public meetings at least 24 hours in advance. These requirements apply to all boards and commissions that fall under the Sunshine Act, including boards of supervisors, planning commissions, zoning hearing boards, recreation committees, and municipal authorities.

The meeting agenda must be posted "at the location of the meeting and at the principal office of the agency." If the township office and meeting location are the same, the agenda can be placed in one accessible location, such as a bulletin board. The agenda must also be posted on the township's website if the township has one *(please note that townships without websites are not required to make one).*

The agenda must include "a listing of each matter of agency business that will be or may be the subject of deliberation or official action

at the meeting." The content should be specific enough that members of the public can fairly know what is anticipated to take place at the meeting. This does not mean, however, that each bill to be paid needs to be listed on the agenda. Instead, the agenda item could be "bills to be paid" and a separate bill list could be provided at the meeting.

If official action needs to be taken on something that was not listed on the agenda, the township may add it to the agenda by majority vote. If the agenda is modified during the meeting, the township must post the updated agenda by the next business day. Townships should consider adding items to the agenda during the meeting only when necessary and the matter cannot wait for an upcoming regularly scheduled meeting or a special meeting.

Minute-Keeping Requirements

The minutes are a record of the actions that agencies take at their meetings. The Sunshine Act requires that minutes include the date, time, and place of the meeting; the names of the members present; the substance of all official actions; a record of any roll call votes taken by individual board members; and the names of all citizens who appeared officially and the subject of their comments.

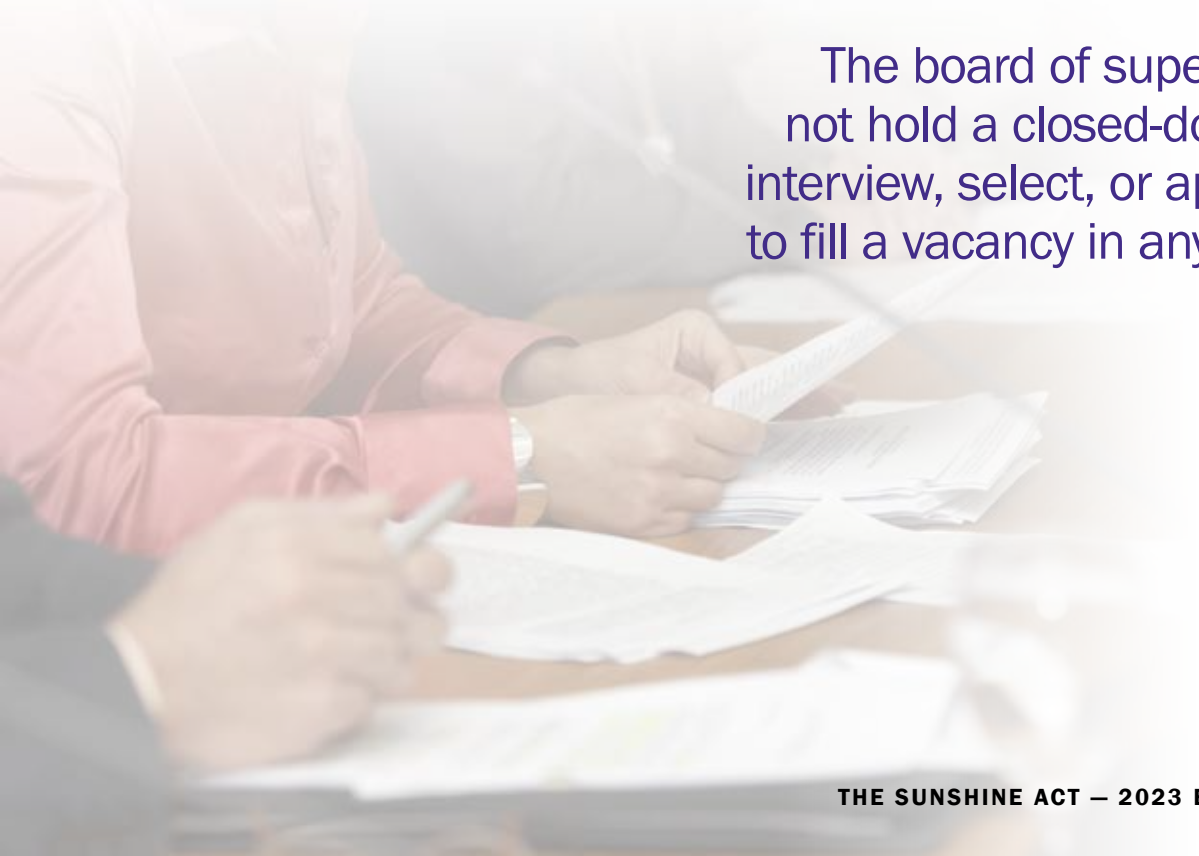
The minutes should be detailed enough that township officials and the public can review them later and determine what took place and what decisions were made. However, townships should be careful not to get into the habit of quoting individuals or including a level of detail that can only be captured through transcription; there is no requirement that minutes be a verbatim capture of what was said at the meeting.

Townships are not required to attach to the minutes any documents provided by residents attending the meeting. Townships are also not required to post meeting minutes to their website or social media pages; however, it is good practice to do so. This promotes transparency with residents, could cut back on some requests for physical copies of the minutes, and allows those who were unable to attend to know what took place at the previous meeting.

Closed-Door Sessions

Township officials may hold closed-door sessions under the following circumstances:

1) Executive sessions held to discuss personnel, engage in information, strategy and negotiation sessions related to collective bargaining issues, consider the lease or purchase of



The board of supervisors may not hold a closed-door session to interview, select, or appoint a person to fill a vacancy in any elected office.

The Sunshine Act suggests that all township meetings be held at the municipal building or some other site that is open and available to the public.

real property, consult advisers regarding current or expected litigation, consider other business which, if conducted in public, would violate privileges or lead to disclosure of information *(including investigations)* protected by various laws and court decisions, and discuss emergency management-related matters.

If the subject does not fall squarely within one of the statutory purposes for conducting an executive session, it should be addressed during a public meeting. **For example, the board of supervisors may not hold a closed-door session to select or appoint a person to fill a vacancy in any elected office.** Likewise, it cannot include third parties that are not working on behalf of the township or conduct settlement negotiations involving a quorum of the board in an executive session.

While personnel discussions may be held during an executive session, the official action to hire, fire, or discipline an employee generally must be made at a public meeting.

Executive sessions may also be held to discuss, plan, or review matters and records that are deemed necessary for emergency preparedness, protection, or public safety and security that if discussed in public would be reasonably likely to jeopardize or threaten public safety.

Township officials must announce their reason for holding an executive session at the open meeting held immediately before or after the executive session. It is not enough for an agency to simply state that it is discussing "litigation." Instead, it must identify the particular case being addressed. Township supervisors may not vote on any motion, proposal, resolution, rule, regulation, ordinance, or order during an executive session.

There is no limit on the length of executive sessions. If the board expects the executive session to be lengthy and does not want to delay the meeting, it may hold the session at a different time and location. If it does not announce the executive session for a specific date and time, board members must receive at least 24 hours of advance notice.

Board members should be careful not to disclose matters that are discussed in executive session, as doing so could inadvertently walk the board member and township into potential legal issues and harm the township's interests. It is important that townships with new board members review their responsibilities and obligations under the Sunshine Act.

2) Conferences at which deliberations of agency business or official action do not occur

are exempt from taking place in public.

A conference is defined as "a training program or seminar, informational in nature, relating to the responsibilities of municipal officials." Conferences may be held by the board of supervisors or an outside entity, such as PSATS or a county association of municipal officials.

Township officials may attend conferences without advertising their attendance to the public, provided that no deliberations of township business or official actions take place during the sessions. However, it would be good practice for officials to report on what they learned at the conference at a future public meeting.

3) Certain working sessions conducted by the board of auditors for the purpose of examining, analyzing, discussing, and deliberating various records and accounts. These may be held in private if no official action is taken with respect to the records and accounts. The auditors' organizational meeting and the meeting at which the audit is finalized, however, must be open to the public so that the public sees the value of their attendance.

Note also that there is no provision in the Sunshine Act allowing boards to conduct private "work sessions" to deliberate on matters involving the budget or other township issues. Regardless of what townships label these sessions, they will be considered a meeting for purposes of the Sunshine Act if the members take official actions or engage in deliberations.

Where Meetings Should Be Held

The Sunshine Act suggests that all township meetings be held at the municipal building or some other site that is open and available to the public. Therefore, the board of supervisors should avoid holding meetings in a supervisor's or secretary's home.

The meeting site should also be large enough to handle the typical number of attendees. If a meeting is expected to generate far greater attendance than normal, townships should be proactive and move the meeting to a different location, such as a community center or high school gym, and make sure to advertise the change in location.

The law requires that townships provide notice to newspapers far enough in advance of the meeting "to allow it to be published…before the date of the specified meeting."

Townships may also provide for members of the public to remotely attend meetings or allow them to submit questions in advance that can then be read during the public comment period. If there are technical issues during the meeting that prevent members of the public from participating, the township should adjourn the meeting to avoid legal challenges.

Advertising Requirements

Townships must advertise their meetings in the legal notices section of a newspaper of general circulation published in the township or one with a circulation equal to or greater than other newspapers published in the township. Free weekly circulars or "shoppers" do not satisfy advertising requirements. However, townships can use those as a supplemental means of communicating meeting dates if they choose to do so.

Townships must also post a notice at their main township building or at the public building where the meetings are to be held. These notices must include the date, time, and place of the meetings. Before meetings, townships also must mail a notice to citizens and members of the news media who have supplied self-addressed, stamped envelopes for this purpose.

The law requires that townships provide notice to newspapers far enough in advance of the meeting "to allow it to be published…before the date of the specified meeting." A minimum of 24 hours' notice must be provided between the time the newspaper hits the streets and the meeting time. For example, if a newspaper is delivered starting at 4 p.m., the meeting must be

held after 4 p.m. the next day. Townships should keep in mind that they may have to give much more than 24 hours' notice for weekly newspapers. Section 604 of the Second Class Township Code also requires that the notice must state the business to be conducted at the meeting.

Following is a summary of advertising requirements for various meeting types:

- **Regular meetings —** Dates, times, and locations of regular meetings must be advertised at least once each calendar year. Public notice of the first regularly scheduled *(organization)* meeting must be given at least three days before the meeting. If the township holds additional regular meetings after it has advertised its meeting schedule, it must also give public notice of these additional meetings.
- **Special meetings —** A special meeting is defined as a "meeting scheduled by an agency after the agency's regular schedule of meetings has been established." Notice of special meetings must be given at least 24 hours in advance.
- **Emergency meetings —** The law does not require public notice for emergency meetings "called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property."
- **Rescheduled meetings —** Public notice must be given at least 24 hours in advance.
- **Recessed and reconvened meetings —** When meetings have been recessed and reconvened, a notice must be posted at the principal office of the agency or the public building in which the meeting is to be held and provided to all who have requested notice and supplied self-addressed, stamped envelopes for that purpose. Recessed and reconvened meetings need not be advertised.
- **Budget and other work sessions —** If there are deliberations or official actions taking place among a quorum of the board, they should be taking place at public meetings. If the township hosts sessions where residents provide information or the board asks questions, those do not need to be advertised.
- **Executive sessions —** The law does not require executive sessions to be advertised in a newspaper or at the meeting site. However, township officials must announce their reason for holding an executive session at the open meeting held immediately before or after the executive session.
- **Cancellations —** There is no provision in the Sunshine Act for public notice of meeting cancellations. However, PSATS suggests giving as much notice as possible to the newspaper and posting an announcement at the township office and/or public meeting site, as well as on all social media platforms used by the township.

Although townships and other agencies subject to the Sunshine Act are not currently permitted to satisfy their public notice requirements through electronic advertising, many agencies choose to post meeting notices on their websites and on social media platforms to promote transparency and increase citizen participation.

Townships must set aside a period of time at each advertised regular and special meeting to allow residents and taxpayers to address the board on any matter of public concern, official action or deliberation which may be before the board.

Public Comment Period

Townships must set aside a period of time at each advertised regular and special meeting to allow residents and taxpayers to address the board on any matter of public concern, official action or deliberation which may be before the board *(there is no requirement that non-residents*

and non-taxpayers be allowed to comment; however, if your township chooses not to, it should spell that out in advance in a public meeting policy). The law does not specify the length of time, although many townships limit public comment to 3 to 5 minutes per person.

If there is not enough time for public comment, the comment period may be deferred until the next regular meeting, or a special meeting may be held before the next regular meeting to receive public comment.

Townships must provide for public comment before any "official action" is taken. As discussed on page 11, the term "official action" constitutes much more than votes taken by the board.

Many townships choose to allow public comments on a "rolling basis," meaning that they allow comments before taking each and every official action. Other townships allow public comment only at the beginning of the meeting. Still others permit public comment on agenda items at the beginning of the meeting and then have a more general comment period at the end. There are pros and cons to each approach.

Townships, in consultation with their solicitors, should create a written policy for conducting public meetings and providing for public comment. *(See page 21 for guidelines on adopting this written policy.)* Because the Sunshine Act does not lay out parameters for exactly what must be provided in the way of public comment, consistency and reasonableness are key features for implementing a fair and successful policy.

Use of Recording Devices

The law allows anyone attending township meetings to use recording devices, including video cameras, cell phones and other devices. Townships may, however, enforce reasonable rules for the use of recording devices if the rules do not violate the law's intent.

For instance, the supervisors may decide that these devices must be placed in a particular location in the meeting room and cannot be used to disrupt the meeting. They also may decide that meetings do not have to stop to permit a citizen to charge a battery, that citizens must use their own power sources when recording township meetings, and that television lights must be placed in the back of the room.

Many townships record their meetings and broadcast them live or on delay on local public access television stations. Others record them and then make them available for viewing through the township's website. Still others record them to assist the township secretary in the creation of the meeting minutes. If townships do make recordings, they should consider posting signs in the public meeting area that recording is taking place and make an announcement at the beginning of meetings that the proceedings will be recorded.

In addition, townships should develop a policy regarding how long they will retain recordings of meetings *(recordings are subject to the RTKL).* Many keep them until the next regularly scheduled township meeting, while others keep them only until the draft minutes are prepared. If

townships dispose of recordings in accordance with a written policy, they will avoid potential headaches when they receive requests for copies.

Violations

Any business transacted during a meeting that violates the Sunshine Act may be voided. The violation is considered a summary offense, punishable by the costs of prosecution *(including attorneys' fees),* plus a fine between $100 and $1,000 for the first offense and the costs of prosecution and a fine between $500 and $2,000 for any subsequent offense. Townships are prohibited from making a payment on behalf of the offender. Under the law, the courts are given a great deal of discretion in dealing with violations of the Sunshine Act.

Violations of the act can be cured. For example, if a board discusses the firing of an employee during an executive session, forgets to formally vote to terminate the employee during the open portion of the meeting, and then the manager terminates the employee the next day, that is a violation. However, the board could cure its violation by conducting the formal vote at the next meeting or by calling a special meeting to do so.

Legal challenges to alleged violations of the law must be started within 30 days of the date of an open meeting at which the alleged violation occurs.

Legal Challenges

Legal challenges to alleged violations of the law must be started within 30 days of the date of an open meeting at which the alleged violation occurs. If the alleged violation occurred at a meeting that was not open to the public, the challenge must be made within 30 days of the discovery of the action. All challenges must be filed within one year of the violation in question in the county court of common pleas.

The court must award all or part of the township's attorney fees and costs if the court finds that the challenge was "frivolous" or "brought with no substantial justification." However, if the plaintiff proves that the township violated the law "willfully" or with "wanton disregard," the court must award all or part of the attorney fees and costs to the prevailing party.

Sunshine Act Q&A

Q: How detailed must our minutes be to comply with the Sunshine Act?
A: The Sunshine Act requires that the minutes reflect the date, time and place of the meeting, the names of the members present, the substance of all official actions, a record of roll call votes, and the names of all citizens who spoke and the subject of their comments. Therefore, while the minutes should be sufficiently detailed so that someone can look back months later and figure out what took place, they do not, and should not, need to be transcriptions.

Q: At our meeting, can we add a new business item that wasn't included on the posted agenda?
A: Yes. Boards and commissions may add new items to the agenda by majority vote, after first stating the reason for the change. The amended agenda must be posted on the township's website, if it has one, and at the township office by the first business day following the meeting at which the agenda was changed. Additionally, the minutes must include the substance of the item added to the agenda, the vote on adding the item to the agenda, the announced reasons for the addition, and the final vote on the item added.

Q: Are there any items that we can add to the agenda without formally amending the agenda and posting an amended agenda after the meeting?
A: Yes, the following items can be voted on without the need to formally amend the agenda or post an amended agenda after the meeting:

- Action can be taken at an emergency or regularly scheduled meeting on a real or potential emergency involving a clear and present danger to life or property.
- Matters that arise or are brought to the attention of the board less than 24 hours prior to the meeting if they are *de minimis* in nature, do not spend funds, and do not require a contract or agreement.

Q: How long must agendas be posted after meetings?
A: The Sunshine Act does not specify how long agendas must be posted after a meeting. Keeping agendas posted for a few days or until the next meeting would be good practice. The board may want to consider setting a policy for how long agendas will remain posted after a meeting to maintain consistency.

Q: When can a quorum of members of the board gather outside of a public meeting?
A: A quorum can gather outside a public meeting if they are simply collecting information about township business or asking questions to better educate themselves on issues. However, they cannot conduct deliberations, which are discussions intended for the purpose of making decisions, or take official action outside of a public meeting.

Q: What happens if less than a quorum of the board of supervisors is present at an advertised public meeting?
A: If no quorum is present, then it is not considered a meeting and no business can be conducted. The chair should announce that the meeting will not be held due to lack of a quorum. You may also want to note in the minutes of the next meeting that the previous meeting on a specified date was not held due to lack of a quorum.

Q: May our board of supervisors have informal, private work sessions to make preliminary decisions about next year's township budget?
A: No. The Sunshine Act does not permit work sessions outside of public meetings if a quorum of the board will be deliberating or taking official action. By making preliminary decisions about next year's budget, the board would be deliberating outside of a public meeting.

Q: We are in litigation with a developer about a zoning ordinance dispute. Is our board permitted to engage in settlement negotiations with the developer in an executive session?
A: No. Boards may not include litigation adversaries in executive sessions. If they would like to conduct settlement negotiations outside of a public meeting, they should rely on their solicitors or board members representing less than a quorum to do so and report back to the full board on the status during an executive session.

Q Who must we permit to speak during the public comment period at our township meetings?
A: The township must provide a reasonable opportunity for its residents and taxpayers to speak at each regular or special meeting. The township may permit all public comment at the beginning of the meeting or before each official action.

Q: Are we permitted to use a "consent agenda" for our meetings?
A: Yes. The township may identify administrative-type items that are normally on the agenda *(approval of minutes, acceptance of correspondence, payment of routine bills, etc.)* and act on them as a block. If a board member wants to address separately something that is on the consent agenda, they can make that request to do so.

Q: Are attendees at our public meetings permitted to make recordings with their cell phones, tablets, or other electronic devices?
A: Yes. However, the township may establish reasonable rules for the regulation of recordings.

Q: We forgot to take official action on an employment issue at last night's meeting. Can we call an emergency meeting this morning to address it?
A: The Sunshine Act provides that an emergency meeting is one "called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property." Therefore, unless the meeting would satisfy that definition, the township should not call an emergency meeting. However, it could advertise a special meeting if the action cannot wait until the next regularly scheduled meeting.

Q: May our board have a private work session before the regularly scheduled meeting to disclose their positions on pending township matters?
A: No, because that would be most likely be considered as deliberations by the board.

Q: Is it ok for our board to conduct a "retreat" that is not open to the public?
A: Like other private gatherings, the board would need to be careful to only gather information or engage in discussions, but not deliberation, or take other action.

SAMPLE **Public Comment Policy**

UNDER SECTION 710 OF THE SUNSHINE ACT, townships may adopt rules and regulations and establish reasonable criteria to ensure that meetings are orderly and productive. First, the board of supervisors, which has discretion to make decisions about the meeting format and conduct, must establish an agenda and an order of business.

Next, the supervisors should determine whether they will set a specific length of time for the public comment period. Townships should be sure to provide enough time so that members of the public have a "reasonable" opportunity to comment and that the means for making public comment are "reasonably" accessible to citizens and taxpayers. Residents and taxpayers must be allowed to speak during the public comment period. Townships may exclude others if they so choose. Restrictions on non-residents and non-taxpayers should be spelled out.

In addition to establishing a reasonable time limit for the public comment period, townships may establish the following rules for the conduct of the comment period:

▶ Require residents and taxpayers to identify themselves by name and address before speaking.

▶ Ask those who want to address the board to sign in so the secretary has the correct spelling of their names for preparing the minutes. (Note that townships may not compel a person to sign their name and give their address. This would also be a good way to collect the speakers' address information rather than requiring them to publicly state their home address, which presents potential First Amendment issues.)

▶ Require that groups designate a spokesperson.

▶ Limit the time that each person may speak if many people want to address the board on a topic.

▶ Ask those who want to address the board about a specific issue and do not want to be included in the public comment period to notify the township in advance so the item can be included on the agenda. (NOTE: This is a matter of board discretion).

The following sample resolution is one approach for adopting a policy for public comment. Townships should consult their solicitor to develop a procedure that best meets their needs and practices..

RESOLVED, That all regular and special meetings of _____Township shall be conducted according to the following order of business:

Call to Order
Pledge of Allegiance
Public Comment
(must be held before taking official action)
Minutes of Previous Meeting
Correspondence
Administrative Actions
Staff Reports
Old Business
New Business
Adjournment

FURTHER RESOLVED, That all public meetings shall be recorded. Recordings shall be retained for _____. Any member of the public wishing to record the meeting shall do so from the marked areas in the meeting room.

FURTHER RESOLVED, That the board of supervisors may, from time to time, direct the publication and posting of the agenda for any regular or special meeting prior to the meeting in such manner as the board may determine by resolution. *(Since posting of an agenda is not required by law, this section is provided as a suggestion.)*

FURTHER RESOLVED, TThat public comment at regular or special meetings shall be governed by the following rules and regulations:

1) A period of public comment shall be held at each meeting either before each official action is taken by the board or at the beginning of the meeting.

2) The chair of the board shall preside over the public comment period and may within his or her discretion:

a) Recognize individuals wishing to offer comment.

b) Require identification of such persons.

c) Allocate available time among individuals wishing to comment.

d) Rule out of order scandalous, impertinent, and redundant comments or any comment the discernible purpose of which is to disrupt or prevent the conduct of the business of the meeting.

3) The time allocated during the public comment period for each resident and/or taxpayer shall be _____ minutes.

4) If there is not enough time for public comment at a meeting, the board of supervisors, at its discretion, may defer the public comment period to a meeting held before the next regular or special meeting or until the next regular or special meeting.

5) The following items will be included in the consent agenda: _____.

Tips for Better Meetings

Holding Productive Meetings

Meetings are an essential part of the local government process because they provide an open, public forum in which township officials and residents can express their ideas and concerns, address current problems and issues, and work together to improve the community.

Township meetings also provide citizens with a chance to take a more active role in their community and observe their elected officials making decisions and establishing policy. A township meeting can be productive and informative if the board of supervisors prepares for the meeting, sets goals, maintains order, and accomplishes objectives.

The following are some tips for making your meetings more informative and productive.

Before the Meeting

1) **Select a chairperson** who is comfortable with running a meeting and adept at diffusing tension among members and/or the public. This person needs to have the confidence to ensure public meetings are professional, productive, and remain on track.

2) **Prepare an agenda** that will serve as an outline of what you plan to cover during the meeting. There are no specific requirements on how to build an agenda. Some townships delegate that to the township manager or secretary, while others will permit members of the board to add any items to the agenda.

3) **Give copies of the agenda** and supporting materials to board members several days before the meeting so they have time to review and prepare for the items on the agenda. Many townships will do that one week or the Friday before the next meeting.

4) **Distribute copies of the agenda to the public and the local news media** before the meeting so they will be able to ask questions and prepare comments.

5) **Post the agenda** at the meeting location and on the township's website, if it has one, at least 24 hours in advance.

During the Meeting

1) **Ask anyone who wants to address the board to sign in** when they arrive at the meeting so that the secretary has the correct spelling of their names for inclusion in the minutes. *(Note that townships may not compel a person to sign his or her name or give an address.)*

2) **Announce that the meeting may be recorded** by anyone in attendance (or is being recorded by the township if it does so).

3) **Require residents and taxpayers to identify themselves** by name and address before speaking. There is a question as to whether requiring speakers to announce their home address at a public meeting is an infringement of their First Amendment rights. Therefore, you should have having them provide their address in writing but not announce it.

4) **Set specified time limits for each speaker** and adhere to those guidelines. This gives everyone a chance to speak and ensures that all issues on the agenda will be covered. Also, don't play favorites. Make sure that those on one side of the issue are not inadvertently being permitted more time to speak than those on the other side.

5) If a particularly large group wants to address the board, **have the group designate a spokesperson.** This cuts down on time and keeps the meeting organized.

6) **If attendees become disruptive,** the chair should take charge immediately and restore order. If attendees refuse to maintain order, the board may recess the meeting or adjourn the meeting until a future date. The chair is also responsible for making sure speakers adhere to time limits and do not stray from the issues being discussed.

7) During the meeting, **the supervisors should conduct themselves in a professional manner** even if attendees become disruptive. Remember that township meetings are one of the few times residents see their supervisors in a professional atmosphere.

8) **Maintain cooperative, rather than adversarial, relationships** with your constituents and be sympathetic to their problems and concerns. This will promote better communication and enhance the township's image.

9) **Don't avoid answering questions during a township meeting** if it makes sense for you to do so. However, if you don't know the answer to a question, don't be afraid to say so. Explain that you need to do more research and let residents know when you or someone from the township will get back to them with the necessary information.

If attendees become disruptive, the chair should take charge immediately and restore order.

10) Consider permitting members of the public to **participate remotely.**

Minutes

1) **Take accurate minutes** of each meeting. The minutes serve as the only formal documentation of the meeting and may be referred to later if any questions or problems arise.

2) **Include in the minutes** the date, time, and place of the meeting; the names of members present; the substance of all official actions; a record, by individual member, of the roll call votes taken; and the names of all citizens who appeared officially, along with the subject of their testimony.

3) **Post the minutes on the township's website** once they are approved so that members of the public who were not able to attend are able to follow the township's business.

Working with the Media (and Social Media)

1) **Get to know the reporters** who cover your township meetings and provide them with any background information they need, including an agenda.

2) **Take advantage of the opportunities provided by social media** by establishing accounts on Facebook, Twitter, and other social media platforms to communicate the goings-on of the township to the media and your residents. This will also assist you in communicating during township-wide emergencies.

3) If there is no regular reporter who covers township meetings, call the paper and **ask the editor to assign one** if possible.

4) If you expect a large turnout from the public and the local media, arrange to **hold the meeting at a site that is big enough to comfortably accommodate everyone.**

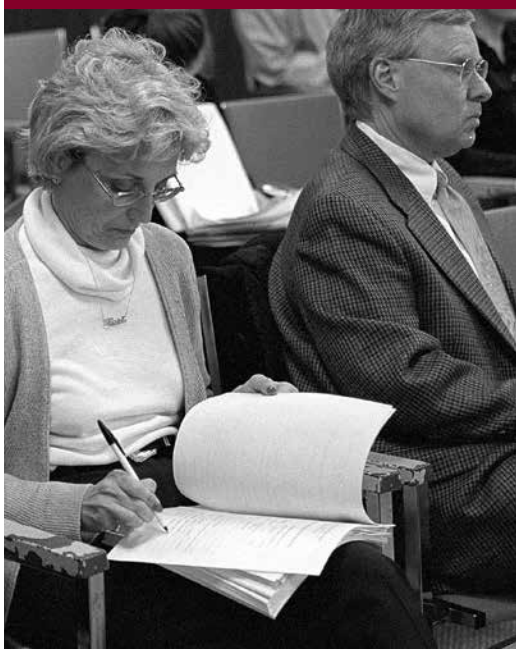
5) **Reserve enough space for the microphones, cameras, and other equipment** brought by reporters to cover meetings.

6) If you have **complaints about a reporter's behavior** during a township meeting, let his or her employer know your concerns.

7) **Talk to the reporters** after the meeting to answer questions and clarify information.

Get to know the reporters who cover your township meetings and provide them with any background information they need, including an agenda.

The Text of the Sunshine Act



CHAPTER 7 OF TITLE 65 OF THE PENNSYLVANIA CONSOLIDATED STATUTES

OPEN MEETINGS

TABLE OF CONTENTS

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 701. Short Title of Chapter

This chapter shall be known and may be cited as the Sunshine Act.

Section 702. Legislative Findings and Declaration.

(a) Findings. — The General Assembly finds that the right of the public to be present at all meetings of agencies, and to witness the deliberation, policy formulation and decision-making of agencies, is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

(b) Declarations. — The General Assembly hereby declares it to be the public policy of this Commonwealth to ensure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.

The General Assembly finds that…secrecy in public affairs undermines the faith of the public in government.

Section 703. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative action." The execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency. The term does not, however, include the deliberation of agency business.

"Agency." The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the Executive Branch of the government of this Commonwealth, including the Governor's Cabinet when meeting on official policymaking business, any board, council, authority or commission of the Commonwealth or of any political subdivision of the Commonwealth or any State, municipal, township or school authority, school board, school governing body, commission, the boards of trustees of all State-aided colleges and universities, the councils of trustees of all State-owned colleges and universities, the boards of trustees of all State-related universities and all community colleges, or similar organizations created by or pursuant to a statute which declares in substance that the organization performs or has for its purpose the performance of an essential governmental function and through the joint action of its members exercises governmental authority and takes official action. The term shall include the governing board of any nonprofit corporation which by a mutually binding legal written agreement with a community college or State-aided, State-owned or State-related institution of higher education is granted legally enforceable supervisory and advisory powers regarding the degree programs of the institution of higher education.

The term does not include a caucus nor a meeting of an ethics committee created under rules of the Senate or House of Representatives.

"Agency business." The framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.

"Caucus." A gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action in the General Assembly.

"Conference." Any training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.

"Deliberation." The discussion of agency business held for the purpose of making a decision.

"Emergency meeting." A meeting called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

"Executive session." A meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting.

"Litigation." Any pending, proposed or current action or matter subject to appeal before a court of law or administrative adjudicative body, the decision of which may be appealed to a court of law.

"Meeting." Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

"Official action."

(1) Recommendations made by an agency pursuant to statute, ordinance or executive order.

(2) The establishment of policy by an agency.

(3) The decisions on agency business made by an agency.

(4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public.

"Political subdivision." Any county, city, borough, incorporated town, township, school district, intermediate unit, vocational school district, or county institution district.

"Public notice."

(1) For a meeting:

(i) Publication of notice of the place, date and time of a meeting in a newspaper of general circulation, as defined by 45 Pa.C.S. § 101 *(relating to definitions),* which is published and circulated in the political subdivision where the meeting will be held, or in a newspaper of general circulation which has a bona fide paid circulation in the political subdivision equal to or greater than any newspaper published in the political subdivision.

(ii) Posting a notice of the place, date and time of a meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(iii) Giving notice to parties under section 709(c) (relating to public notice).

(2) For a recessed or reconvened meeting:

(i) Posting a notice of the place, date and time of the meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(ii) Giving notice to parties under section 709(c).

"Special meeting." A meeting scheduled by an agency after the agency's regular schedule of meetings has been established.

Section 704. Open Meetings.

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions), or 712 (relating to General Assembly meetings covered).

Section 705. Recording of Votes.

In all meetings of agencies, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of roll call votes, recorded.

Section 706. Minutes of Meetings, Public Records, and Recording of Meetings.

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

(1) The date, time and place of the meeting.

(2) The names of members present.

(3) The substance of all official actions, and a record by individual member of the roll call votes taken.

(4) The names of all citizens who appeared officially and the subject of their testimony.

Section 707. Exceptions to Open Meetings.

(a) Executive session. — An agency may hold an executive session under section 708 *(relating to executive sessions).*

(b) Conference. — An agency is authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference.

(c) Certain working sessions. — Boards of auditors may conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the various accounts and records with respect to which such boards are responsible, so long as official action of a board with respect to such records and accounts is taken at a meeting open to the public and subject to the provisions of this chapter.

Written minutes shall be kept of all open meetings of agencies.

Section 708. Executive Sessions.

(a) Purpose. — An agency may hold an executive session for one or more of the following reasons:

(1) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). The provisions of this paragraph shall not apply to any meeting involving the appointment or selection of any person to fill a vacancy in any elected office.

(2) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.

(3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.

(4) To consult with its attorney or other professional adviser regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.

(5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.

(6) For duly constituted committees of a board or council of trustees of a state-owned, state-aided, or state-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

(7) To discuss, plan or review matters and records that are deemed necessary for emergency preparedness, protection of public safety and security of all property in a manner that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection.

(Amended by Act 156 of 2018)

The executive session may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time.

Public notice is not required in the case of an emergency meeting or a conference.

(b) Procedure. — The executive session may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.

(c) Limitation. — Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 707 (relating to open meetings) shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 704 *(relating to open meetings)*.

Section 709. Public Notice.

(a) Meetings. — An agency shall give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of the meeting and shall give public notice of the schedule of its remaining regular meetings.

An agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice. Public notice is not required in the case of an emergency meeting or a conference.

Professional licensing boards within the Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth shall include in the public notice each matter involving a proposal to revoke, suspend or restrict a license.

(b) Notice. — With respect to any provision of this chapter that requires public notice to be given by a certain date, the agency, to satisfy its legal obligation, must give the notice in time to allow it to be published or circulated within the political subdivision where the principal office of the agency is located or the meeting will occur before the date of the specified meeting.

(c) Copies. — In addition to the public notice required by this section, the agency holding a meeting shall supply, upon request, copies of the public notice thereof to any newspaper of general circulation in the political subdivision in which the meeting will be held, to any radio or television station which regularly broadcasts into the political subdivision, and to any interested parties if the newspaper, station or party provides the agency with a stamped, self-addressed envelope prior to the meeting.

(c.1) Notification of agency business to be considered. —

(1) In addition to any public notice required under this section, an agency shall provide the following notification of agency business to be considered at a meeting as follows:

(i) If the agency has a publicly accessible Internet website, the agency shall post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, on the website no later than 24 hours in advance of the time of the convening of the meeting.

(ii) The agency shall post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, at the location of the meeting and at the principal office of the agency.

(iii) The agency shall make available to individuals in attendance at the meeting copies of the agenda, which include a listing of each matter of agency business that will be or may be

the subject of deliberation or official action at the meeting.

(2) This subsection shall not apply to a conference or a working session under section 707 (relating to exceptions to open meetings) or an executive session under section 708 (relating to executive sessions).

(Amended by Act 65 of 2021)

(d) Meetings of General Assembly in Capitol Complex. — Notwithstanding any provision of this section to the contrary, in case of sessions of the General Assembly, all meetings of legislative committees held within the Capitol Complex where bills are considered, including conference committees, all legislative hearings held within the Capitol Complex where testimony is taken, and all meetings of legislative commissions held within the Capitol Complex, the requirement for public notice thereof shall be complied with if, not later than the preceding day:

(1) The supervisor of the newsroom of the State Capitol Building in Harrisburg is supplied for distribution to the members of the Pennsylvania Legislative Correspondents Association with a minimum of 30 copies of the notice of the date, time and place of each session, meeting or hearing.

(2) There is a posting of the copy of the notice at public places within the Main Capitol Building designated by the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(e) Announcement. — Notwithstanding any provision of this act to the contrary, committees may be called into session in accordance with the provisions of the Rules of the Senate or the House of Representatives and an announcement by the presiding officer of the Senate or the House of Representatives. The announcement shall be made in open session of the Senate or the House of Representatives.

Section 710. Rules and Regulations for Conduct of Meetings.

Nothing in this act shall prohibit the agency from adopting by official action the rules and regulations necessary for the conduct of its meetings and the maintenance of order. The rules and regulations shall not be made to violate the intent of this chapter

Section 710.1. Public Participation.

(a) General rule. — Except as provided in subsection (d), the board or council of a political subdivision, or of an authority created by a political subdivision shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision, or for both, to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action. The board or council has the option to accept all public comment at the beginning of the meeting.

If the board or council determines that there is not sufficient time at a meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment, the board or council may defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.

(b) Limitation on judicial relief. — If a board or council of a political subdivision, or an authority created by a political subdivision, has complied with the provisions of subsection (a),

A person attending a meeting of an agency shall have the right to use recording devices to record all the proceedings.

the judicial relief under section 713 (relating to business transacted at unauthorized meeting void) shall not be available on a specific action solely on the basis of lack of comment on that action.

(c) Objection. — Any person has the right to raise an objection at any time to a perceived violation of this chapter at any meeting of a board or council of a political subdivision or an authority created by a political subdivision.

(d) Exception. — The board or council of a political subdivision or of an authority created by a political subdivision which had, before January 1, 1993, established a practice or policy of holding special meetings solely for the purpose of public comment in advance of advertised regular meetings shall be exempt from the provisions of subsection (a).

Section 711. Use of Equipment During Meetings.

(a) Recording devices. — Except as provided in subsection (b), a person attending a meeting of an agency shall have the right to use recording devices to record all the proceedings. Nothing in this section shall prohibit the agency from adopting and enforcing reasonable rules for their use under section 710 *(relating to rules and regulations for conduct of meetings).*

(b) Rules of the Senate and House of Representatives. — The Senate and House of Representatives may adopt rules governing the recording or broadcast of their sessions and meetings and hearings of committees.

Section 712. General Assembly Meetings Covered.

Notwithstanding any other provision, for the purpose of this act, meetings of the General Assembly which are covered are as follows: All meetings of committees where bills are considered, all hearings where testimony is taken, and all sessions of the Senate and the House of Representatives. Not included in the intent of this chapter are caucuses or meetings of any ethics committee created pursuant to the Rules of the Senate or the House of Representatives.

Section 712.1 Notification of Agency Business Required and Exceptions.

(a) Official Action. — Except as provided in subsection (b), (c), (d) or (e), an agency may not take official action on a matter of agency business at a meeting if the matter was not included in the notification required under section 709(c.1) *(relating to public notice).*

(b) Emergency Business. — An agency may take official action at a regularly scheduled meeting or an emergency meeting on a matter of agency business relating to a real or potential emergency involving a clear and present danger to life or property regardless of whether public notice was given for the meeting.

(c) Business Arising Within 24 Hours Before Meeting. — An agency may take official action on a matter of agency business that is not listed on a meeting agenda if:

(1) the matter arises or is brought to the attention of the agency within the 24-hour period prior to the meeting; and

(2) the matter is de minimis in nature and does not involve the expenditure of funds or entering into a contract or agreement by the agency.

(d) Business Arising During Meeting. — If, during the conduct of a meeting, a resident or taxpayer brings a matter of agency business that is not listed on the meeting agenda to the attention of the agency, the agency may take official action to refer the matter to staff, if applicable,

for the purpose of researching the matter for inclusion on the agenda of a future meeting, or, if the matter is de minimis in nature and does not involve the expenditure of funds or entering into a contract or agreement, the agency may take official action on the matter.

(e) Changes to Agenda. —

(1) Upon majority vote of the individuals present and voting during the conduct of a meeting, an agency may add a matter of agency business to the agenda. The reasons for the changes to the agenda shall be announced at the meeting before any vote is conducted to make the changes to the agenda. The agency may subsequently take official action on the matter added to the agenda. The agency shall post the amended agenda on the agency's publicly accessible Internet website, if available, and at the agency's principal office location no later than the first business day following the meeting at which the agenda was changed.

(2) This subsection shall not apply to a conference or a working session under section 707 (relating to exceptions to open meetings) or an executive session under section 708 (relating to executive sessions).

(f) Minutes. — If action is taken upon a matter of agency business added to the agenda under this section, the minutes of the meeting shall reflect the substance of the matter added, the vote on the addition and the announced reasons for the addition.

(Amended by Act 65 of 2021)

Section 713. Business Transacted at Unauthorized Meeting Void.

A legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting.

The court may enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this chapter, it may, in its discretion, find that any or all official action taken at the meeting shall be invalid.

Should the court determine that the meeting met the requirements of this chapter, all official action taken at the meeting shall be fully effective.

Section 714. Penalty.

(a) Fines and costs. — Any member of any agency who participates in a meeting with the intent and purpose by that member of violating this chapter commits a summary offense and shall, upon conviction, be sentenced to pay:

(1) For a first offense, the costs of prosecution plus a fine of at least $100 and, in the discretion of the sentencing authority, not more than $1,000.

(2) For a second or subsequent offense, the costs of prosecution plus a fine of at least $500 and, in the discretion of the sentencing authority, not more than $2,000.

(b) Payment. — An agency shall not make a payment on behalf of or reimburse a member of an agency for a fine or cost resulting from the member's violation of this section.

(Amended by Act 56 of 2011)

Section 714.1 Attorney Fees.

If the court determines that an agency willfully or with wanton disregard violated a provision of this chapter, in whole or in part, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.

If the court finds that the legal challenge was of a frivolous nature or was brought with no substantial justification, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.

Section 715. Jurisdiction and Venue of Judicial Proceedings.

The Commonwealth Court shall have original jurisdiction of actions involving State agencies, and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this chapter, by injunction or other remedy deemed appropriate by the court. The action may be brought by any person where the agency whose act is complained of is located or where the act complained of occurred.

Section 716. Confidentiality.

All acts and parts of acts are repealed insofar as they are inconsistent with this chapter, excepting those statutes which specifically provide for the confidentiality of information. Those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the investigation of possible or certain violations of the law and quasi-judicial deliberations, shall not fall within the scope of this act.

Sunshine Act Court Cases *(through January 2023)*

As with any law of this nature, disagreements over the interpretation of various provisions of the Sunshine Act have resulted in litigation and subsequent court decisions that offer further guidance to those who must comply with the law.

Following is a summary of significant but not necessarily all court decisions that have been handed down on the Sunshine Act. The cases are listed according to the section of the law most referenced in the decision, if any.

Sunshine Act – Generally

Agencies cannot use their own Sunshine Act violations to escape from contractual obligations. ***Weest v. Borough of Wind Gap,*** 621 A.2d 1074 (Pa.Cmwlth. 1993). In ***Weest,*** a borough tried to invalidate a settlement agreement by arguing that since its insurance carrier's attorney negotiated the agreement and the agreement was never ratified at an open meeting, the borough violated the Sunshine Act. The court rejected this argument, stating that "allowing the borough to nullify its own agreements by invoking the Sunshine Act would give government agencies an escape hatch to renege on any agreements they do not wish to honor and would give them an incentive to violate the Sunshine Act in order to preserve such an escape hatch..." In any event, there was no Sunshine Act violation because the borough's contract with the insurer empowered the insurer to negotiate on the borough's behalf and the contract was properly approved at a public meeting.

In ***Perry v. Tioga County,*** 694 A.2d 1176 (Pa.Cmwlth. 1997), a county cited its own violations of the Sunshine Act as a basis to invalidate a settlement agreement that it no longer wanted to sign within an employee. The court held that the county could not raise its own violations as a defense; however, the court invalidated the contract anyway because the lack of signatures meant the document failed to meet the statutory requirements for public contracts.

Section 703 – Definitions

Members not physically present, but participating by telephone, count towards a quorum provided that they are able to hear and speak to all present, and vice versa. ***Babac v. Pennsylvania Milk Marketing Bd.,*** 613 A.2d 551 (Pa. 1992); ***Mazur v. Trinity Area Sch. Dist.,*** 926 A.2d 1260

(Pa.Cmwlth. 2007) (finding that the law defines a meeting as a gathering that the members of an agency attend or participate in, thus making participation by telephone a valid option). ***NOTE:*** Although there have not been any decisions on the issue of attendance via videoconference or web conference, it is almost certain that the standards applicable to attendance via telephone would apply.

Individuals and ad hoc committees with no decision-making authority are not agencies subject to the Sunshine Act. ***Ristau v. Casey,*** 647 A.2d 642 (Pa.Cmwlth. 1994). The court held that the word "agency" in the statute referred to a group of individuals. Therefore, a single individual, such as the governor, could not be an agency.

In addition, a governor-appointed nominating committee was not an agency because it 1) was not created by or pursuant to statute; 2) did not perform a predefined essential governmental function and the governor was not bound to accept the commission's recommendations; and 3) did not exercise any governmental authority, but was a "temporary, limited-purpose, advisory board without authority to make a binding recommendation."

The court also made the following statement: "The majority of other decisions have generally held that *ad hoc committees or citizens advisory committees empaneled for the purpose of furnishing information and recommendations* to governing or decision-making entities are not subject to the open meeting law unless they have actual, or de facto, decision-making authority."

Agency executives and employees may engage in administrative action after official actions have been taken by agencies. ***Fraternal Order of Police, Flood City Lodge No. 86 v. City of Johnstown,*** 594 A.2d 838 (Pa.Cmwlth. 1991). On December 12, 1986, a mayor notified all the city's police officers, except the chief, that effective at midnight on December 31, they would be laid off indefinitely due to the city's failure to adopt a budget. The officers were reinstated on January 15, 1987. The police union challenged the layoffs as illegal and invalid because there was no public meeting or vote before the layoffs.

The court found that the decision to lay off the officers was not made at an impermissible meeting but rather was made at the city council meeting at which the budget was discussed and approved. That meeting, which was properly advertised, complied with the Sunshine Act.

Section 704 – Open Meetings

Closed-door fact-finding gatherings conducted by a quorum of agency members do not violate the Sunshine Act if they are held for informational purposes and do not involve deliberations. ***Smith v. Township of Richmond,*** 82 A.3d 407 (Pa. 2013).

To educate a new supervisor and solicitor about pending litigation involving the possible

expansion of a quarry, the board conducted four private gatherings with other parties, including the quarry owner, neighboring municipalities, and a citizens group. At the next public meeting, the solicitor explained that the board did not deliberate on, conduct business, or make any decisions during those gatherings. The new supervisor and solicitor later met with the quarry's representatives to discuss a possible settlement.

Just prior to the board's next regularly scheduled meeting, the quarry delivered a proposed settlement agreement, which the solicitor read into the record after the board met in executive session. Following public comment and debate, the board voted to accept the agreement.

A resident claimed that the gatherings violated the Sunshine Act because they were closed to the public and a quorum deliberated on official business. He contended that the board had already decided to settle and scheduled the gatherings merely to develop settlement terms.

The Supreme Court addressed whether the definition of "deliberation" is triggered where an agency meets with third parties, including adverse parties in litigation, "to obtain information designed to help the agency make a more informed decision with regard to settling the ongoing litigation" and found that the Sunshine Act does not preclude "private information gathering as a collective effort by members of an agency, including by a quorum." It also held that "[g]atherings held solely for the purpose of collecting information or educating agency members about an issue" are not held for the purpose of making a decision, even where the information obtained may later assist the agency in taking official action. It stated that the General Assembly, by requiring open meetings when held for the specific purpose of "making a decision," left open "closed-door discussions for other purposes."

However, while the court noted the "practical benefit" of having closed-door meetings, such as those held in this case, when an agency does hold such meetings, "skepticism among the general public is not unreasonable" and that "the agency incurs the risk that citizens will challenge the propriety of its actions." Therefore, agencies are cautioned to consult with their solicitors before conducting private gatherings involving a quorum of the governing body.

Closed-door fact-finding gatherings conducted by a quorum of agency members do not violate the Sunshine Act if they are held for informational purposes and do not involve deliberations.

Discussion of specific agency business by a quorum may constitute deliberation. ***Ackerman v. Upper Mt. Bethel Twp.***, 567 A.2d 1116 (Pa. Cmwlth. 1989) (holding that a private conference among three members of the township board of supervisors about an amendment to the township zoning ordinance was a discussion of agency business and constituted deliberations); ***Moore v. Township of Raccoon***, 625 A.2d 737 (Pa.Cmwlth. 1993) (ruling that a planning commission violated the Sunshine Act when a majority of its members met privately in the home of one of its members to discuss a proposed junkyard ordinance because they engaged in deliberation).

However, the members cured the defective meeting at a subsequent valid public meeting, at which they voted to recommend proposed changes to the township supervisors.

The court ruled that the commission's recommendations were not automatically invalidated by the prior illegal meeting since the proposed changes to the township ordinance were discussed and voted on at the later public meeting. The court held that the trial court did not abuse its discretion in allowing the actions of the planning commission members to stand, despite the prior illegal meeting.

When discussions do not cross the line into deliberations, there are no violations of the Sunshine Act. For example, in ***Conners v. West Greene Sch. Dist.,*** 569 A.2d 978 (Pa.Cmwlth. 1989), a court ruled that even if board members informally discussed a proposed budget, doing so did not constitute a violation of law because there is a substantial difference between discussion and deliberation. It found that a school board member is not foreclosed from discussing and debating informally with others, including school board members, the pros and cons of particular proposals and matters that may be on the board's agenda, and that the law does not prohibit a member from inquiring, questioning, and learning about the budget and other school issues outside a public meeting. ***See also Bradford Area Educ. Ass'n v. Bradford Area Sch. Dist.,*** 572 A.2d 1314 (Pa.Cmwlth. 1990) (rejecting argument that Sunshine Act had been violated when a school board considered and discussed an administrative reorganization plan without the public notice because the board held extensive public meetings in which the public voiced objections and support for the plan and officers and members of the union met several times with the board and commented at length on the proposal); ***Association of Community Organizations for Reform Now v. SEPTA,*** 789 A.2d 811 (Pa.Cmwlth. 2002) (ruling that an alleged violation was cured by a subsequent public meeting); ***Belitskus v. Hamlin Twp.,*** 764 A.2d 669 (Pa.Cmwlth. 2000) (holding that an agency did not violate the Sunshine Act by having a joint meeting with other local agencies because they "did not enact any law, policy, or regulation, did not create any liability under contract, and did not adjudicate any rights, duties, or responsibilities" and "the Sunshine Act does not require agency members to inquire, question, and learn about agency issues only at an open meeting.").

Taking witness testimony as part of an investigative proceeding is not considered to be official action or deliberation because it involves no voting, decisions, recommendations, or establishment of policies. ***Taylor v. Borough Council Emmaus Borough,*** 721 A.2d 388 (Pa.Cmwlth. 1998).

The Sunshine Act does not apply to post-meeting writings that explain an agency's actions because it "only governs the formal actions taken at public meetings." ***Smith v. Hanover Zoning Hearing Bd.,*** 78 A.3d 1212 (Pa.Cmwlth. 2013).

Section 708 – Executive Sessions

A school district violated the Sunshine Act when it permitted the opposing party to litigation to participate in an executive session. ***Trib Total Media, Inc. v. Highlands Sch. Dist.,*** 3 A.3d 695 (Pa.Cmwlth. 2010). The court noted that Section 708(a) provides "only six [now seven] narrow reasons for which an agency is permitted to conduct an executive session" and that agencies do not have broad discretion to independently determine when it is appropriate to exclude the public from meetings. Having the third parties present destroyed the confidentiality of any communications between the board and its solicitor, which is the purpose of Section 708(a)(4). Instead, the court stated that the meeting appeared to provide the owners a "private audience" with the board or an "opportunity to lobby" the board.

Making preliminary decisions in executive session is permissible. In ***Morning Call, Inc. v. Board of Sch. Dirs. of Southern Lehigh Sch.***

Taking witness testimony as part of an investigative proceeding is not considered to be official action or deliberation because it involves no voting, decisions, recommendations, or establishment of policies.

Dist., 642 A.2d 619 (Pa.Cmwlth. 1994), the court upheld a school district's action to "vote" in executive session to reduce the number of candidates for superintendent from five to three. The court believed the executive session "vote" was secondary to the ultimate matter to be decided and was not an essential component of the action eventually taken and described a vote within the meaning of the act as being one which "commits the agency to a course of conduct."

An agency must specifically state its reasons for going into executive session to comply with the Sunshine Act. It is not enough for an agency to announce that it wants to discuss litigation matters. ***Reading Eagle Co. v. Council of City of Reading,*** 627 A.2d 305 (Pa.Cmwlth. 1993). The court held that the public announcement must provide meaningful information to the public about the executive session and be extensive enough to describe a real, discrete situation and may not be so general as to be meaningless. ***See also Butler v. Indian Lake Borough,*** 14 A.3d 185 (Pa.Cmwlth. 2011) (holding that borough council could not simply state that it was going into executive session to discuss potential litigation, but instead "was required to identify the subject of the litigation.").

Because zoning hearing boards are "characterized predominantly by judicial characteristics and functions," they may deliberate in an executive session. ***Kennedy v. Upper Milford Twp. Zoning Hearing Bd.,*** 834 A.2d 1104 (Pa. 2003).

Disciplinary matters may need to be conducted in executive sessions to protect individuals' right to seek confidentiality. "While executive sessions are not to be used to circumvent the public's right to know, this right must be balanced under certain situations with the individual's right to seek confidentiality concerning a disciplinary matter." ***Mirror Printing Co., Inc. v. Altoona Area Sch. Bd.,*** 609 A.2d 917 (Pa. Cmwlth. 1992). There is no provision in the Sunshine Act that mandates that the name of an employee subject to discipline must be disclosed at a public meeting. ***Highlands Sch. Dist. v. Rittmeyer,*** 243 A.3d 755 (Pa.Cmwlth. 2020).

Ex oficio members of boards are permitted to participate in executive sessions. Because Section 708 precludes official action from taking place in executive sessions, "the legal right to vote as a member of the board is of no consequence with respect to participation in an executive session." ***McCord v. Pennsylvania Gaming Control Bd.,*** 9 A.3d 1216 (Pa.Cmwlth. 2010).

Executive sessions to discuss consultant terminations are inappropriate because consultants are not considered public employees or officers within the meaning of Section 708(a)(1). ***Easton Area Joint Sewer Authority v. The Morning Call, Inc.,*** 581 A.2d 684 (Pa.Cmwlth. 1990).

An agency must specifically state its reasons for going into executive session to comply with the Sunshine Act.

Agencies cannot delegate their obligation to permit public comment to other committees created or authorized by the agencies.

There is broad authority to engage in collective bargaining-related activities in executive session. ***Lawrence County v. Brenner,*** 82 A.2d 79 (Pa.Cmwlth. 1990) (holding that county commissioners' decision to close a nursing home — made during an executive session after collective bargaining negotiations reached a stalemate — was related to the labor negotiations process and thus, fell within the executive session exception); ***St. Clair Area Sch. Dist. v. St. Clair Area Educ. Ass'n,*** 552 A.2d 1133 (Pa. Cmwlth. 1988) (holding that the fact that a tentative agreement between the teachers' union and the school district did not take place at a public meeting did not preclude the agreement from having legal effect and that it was never the purpose of the Sunshine Act to compel negotiations of labor contracts in the open).

Section 709 – Public Notice

There is no obligation under the Sunshine Act to give notice of meetings (as opposed to hearings) to conditional use applicants. ***Sheetz, Inc. v. Phoenixville Borough Council,*** 804 A.2d 113 (Pa.Cmwlth. 2002).

A court's decision to invalidate agency actions in violation of the Sunshine Act is discretionary and since violations are curable, courts are not obligated to invalidate agency action. ***Borough of East McKeesport v. Special/Temporary Civil Service Com'n of Borough of East McKeesport,*** 942 A.2d 274 (Pa.Cmwlth. 2008). The failure to comply with notice requirements may be excused where there is no evidence that the individuals concerned were prejudiced by the lack of notice and information. ***Petition of Bd. of Directors of Hazleton Area Sch. Dist.,*** 527 A.2d 1091 (Pa.Cmwlth. 1987)

Parties must challenge board actions "within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which the act was violated." ***Bradford Area Educ. Ass'n v. Bradford Area Sch. Dist.,*** 572 A.2d 1313 (Pa.Cmwlth. 1990); ***see also Belitskus v. Hamlin Twp.,*** 764 A.2d 669 (Pa.Cmwlth. 2000) (plaintiff learned of action from a June 29, 1999, newspaper article but did not file complaint until August 10, 1999).

Section 710 – Rules and Regulations for Conduct of Meetings

Section 710.1 – Public Participation

Agencies may reasonably limit the subject of public comments to "current business." However, in the right circumstances, the denial of the right to speak could give rise to a cause of action. ***Baravordeh v. Borough Council of Prospect Park,*** 706 A.2d 362 (Pa.Cmwlth. 1998).

Agencies cannot delegate their obligation to permit public comment to other committees created or authorized by the agencies. "[S]imply because committees fall within the definition of 'agency' does not mean that they may be substituted for a particular body (or board or council) accorded a specific responsibility (entertaining public commentary) under the Sunshine Act." ***Alekseev v. City Council of City of Philadelphia,*** 8 A.3d 311 (Pa. 2010).

There is no requirement that agencies guarantee that all in attendance will have seats at public meetings; instead, reasonable efforts to accommodate crowds will suffice. Accommodations for large crowds may include having members of the public at an adjoining facility equipped with speakers, microphone, and chairs

because they can hear the proceedings, participate, and address the agency. ***Sovich v. Shaughnessy,*** 705 A.2d 942 (Pa.Cmwlth. 1998).

Officials may have qualified immunity, in certain circumstances, when they limit the public's right to speak at public meetings. In ***LaVerdi v. Jenkins Twp.,*** 49 Fed.Appx. 362 (3d Cir. 2002), the court found that "a reasonable public official would have known that silencing an individual because of his views would violate that individual's First Amendment rights." However, if the public official silences a public meeting attendee because that attendee is causing a disruption serious enough to justify his removal from the meeting, qualified immunity may shield the public official from liability. "[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." ***See also Werkheiser v. Pocono Twp. Bd. of Supervisors,*** 704 Fed.Appx. 156 (3d Cir. Aug. 10, 2017) (rejecting request to have court declare a politically motivated act, undertaken by a majority of the elected board, pursuant to their proper authority, as in violation of the First Amendment).

Section 711 – Use of Equipment During Meetings

Use of recording devices at public meetings is not a violation of federal wiretap laws because Section 711 specifically allows for the use of recording devices at public meetings. ***Harman v. Wetzel,*** 766 F.Supp. 271 (E.D.Pa. 1991).

Bans on recording at public meetings are illegal and invalid because the public has the right to record public meetings. ***Hain v. Board of Sch. Directors of Reading School Dist.,*** 641 A.2d 661 (Pa.Cmwlth. 1994).

Section 713 – Business Transacted at Unauthorized Meeting Void

Business that is conducted at meetings that are in violation of the Sunshine Act may be voided. ***Thomas v. Township of Cherry,*** 722 A.2d 1150 (Pa.Cmwlth. 1999) (rejecting termination of a township employee by two members of township board who met without public notice or notice to the third member). However, courts have discretion as to whether to invalidate actions taken at illegal meetings. ***Keenheel v. Commonwealth, Pennsylvania Securities Com'n,*** 579 A.2d 1358 (Pa.Cmwlth. 1990). The court held that a township's failure

Bans on recording at public meetings are illegal and invalid because the public has the right to record public meetings.

While courts may void prior actions as being in violation of the Sunshine Act, they do not have authority to issue prospective injunctive relief against an agency, such as prohibiting them from holding executive sessions until a lawsuit is resolved.

to comply with the Sunshine Act when approving a settlement agreement did not require the court to throw out the settlement agreement. To permit the township to "unilaterally nullify the agreement under the guise of a Sunshine Act violation would perpetuate an injustice" upon the other parties that reasonably relied on the township's representations regarding the settlement agreement.

The manner in which a challenge under the Sunshine Act is commenced, whether by complaint, writ, agreement, or other traditionally recognized means, is of no significance. ***Tom Mistick and Sons, Inc. v. City of Pittsburgh,*** 567 A.2d 1107 (Pa.Cmwlth. 1989).

While courts may void prior actions as being in violation of the Sunshine Act, they do not have authority to issue prospective injunctive relief against an agency, such as prohibiting them from holding executive sessions until a lawsuit is resolved. ***Dusman v. Board of Directors of Chambersburg Area Sch. Dist.,*** 123 A.3d 354 (Pa.Cmwlth. 2015).

Section 716 – Confidentiality

A municipality's actions to adopt charges against a police chief in an executive session were permissible because Section 716 exempts "those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the investigation of possible or certain violations of the law." Since the chief's actions were being investigated by the district attorney's office, the executive sessions meeting at which the charges were adopted by the council was properly exempted from the act's provisions. ***In re Blystone,*** 600 A.2d 672 (Pa.Cmwlth. 1991).

A Guide to the Right-to-Know Law

Introduction

Under the Right-to-Know Law (Act 3 of 2008) (RTKL), records are presumed to be public, and therefore subject to disclosure, unless they are protected or otherwise exempt from disclosure. In other words, the burden is on agencies such as townships to show why records should not be disclosed to the public.

Since the law took effect in 2009, the Office of Open Records (OOR) has reviewed tens of thousands of appeals from individuals, businesses, and the media contesting records requests denied by state and local governments. The office has issued final determinations on these appeals, many of which impact township government.

In addition, Pennsylvania's appellate courts have issued rulings on many of these disputed issues. The "Judicial Decisions and Final Determinations" portion of this manual *(see page 79)* provides information on how the courts and the OOR have ruled on township-related issues and provides guidance on which cases should be examined when a township, in consultation with its solicitor, is deciding whether a document is exempt from disclosure.

About the Office of Open Records

Townships should look to the OOR as a key source of information on the RTKL. In addition to providing training and ruling on appeals, the office is staffed with attorneys who can answer specific questions about whether records are public and subject to disclosure.

Township officials may contact the OOR by calling (717) 346-9903 or emailing openrecords@pa.gov. The office's website, www.openrecords.pa.gov, also contains a wealth of information about the RTKL, including copies of final determinations, blogs, video training tools, tips on common RTKL issues, procedural guidelines, frequently asked questions, and the fee schedule for providing copies of records.

Appointing an Open Records Officer

The RTKL requires that every township appoint an open records officer. This is the township official or employee who receives records requests, directs them to the appropriate person, tracks the progress of responses, and issues interim and final responses to

requesters. Townships must ensure that this position is always filled and should be careful not to leave it vacant when there is a change in township staff.

The open records officer should be the same employee who is responsible for managing the township's records. In many cases, this will be the secretary or manager. In some instances, townships appoint the township solicitor. The open records officer should also be authorized to consult the township solicitor when necessary to determine whether a record is public and seek assistance when writing denial letters.

Townships may appoint more than one open records officer. Because township police departments possess records that cannot be viewed by non-law enforcement personnel, those townships with police departments should appoint a separate open records officer for their police department or at least have a designee that the township's open records officer may rely upon to review law enforcement records.

In addition, after the enactment of Act 22 of 2017, requests for recordings in the possession of law enforcement agencies now fall outside of the RTKL so police departments need to be aware of how to respond to those requests.

In addition, townships may wish to appoint an alternate open records officer so that the township can properly respond to requests when the primary open records officer is on vacation or extended sick leave. Although the response clock does not start until the open records officer receives a request, the requester may not know that the officer is unavailable and commence an appeal, thereby causing the township to unnecessarily incur expenses.

Townships must ensure that this position is always filled and should be careful not to leave it vacant when there is a change in township staff.

Townships must register their open records officer with the OOR by sending the officer's name and the township's name, address, phone and fax numbers, and email address (if applicable) by email to ORORegistration@pa.gov or by fax to (717) 425-5343. The OOR is required by law to post open records officers' names and contact information on its website.

Posting Open Records Information

The Right-to-Know Law requires townships to post the following information at the township building and on their website if they have one:

- contact information for the township's open records officer;
- contact information for the OOR
  - Office of Open Records
    333 Market Street, 16th Floor
    Harrisburg, PA 17101
  - Phone: (717) 346-9903
  - Website: openrecords.pa.gov
  - Email: openrecords@pa.gov;
- contact information for the county district attorney if the township has a police department;
- a records request form *(Townships may create their own request form but must always accept the OOR's standard RTKL request form as shown on page 59.); and*
- the township's open records policy, if it adopts one.

Establishing an Open Records Policy

Although not required by law, PSATS recommends that townships adopt an open records policy that identifies the open records officer and specifies his or her contact information and office hours, and includes information about fees, how to submit open records requests, and how to appeal a denial. A sample open records policy appears on page 57.

When drafting an open records policy, townships may also include a reference to their record retention schedule, if they have one *(townships are strongly encouraged to adopt one if they have not*

already); state whether they will accept verbal or anonymous requests *(townships must accept written requests but are not required to accept verbal or anonymous ones);* and identify which public records, if any, will be routinely available on their website, including open records requests and responses. Townships should proactively use their websites to cut down on RTKL requests by posting commonly requested documents such as minutes and budgets. If documents are posted on the township's website, the township may refer the requester to the website rather than provide the records *(they can also refer requesters to any other website that contains the information requested).*

If a township chooses to adopt an open records policy, it must post the policy at the township office and on the township's website if it has one.

The Right-to-Know Law Request Form

The OOR has developed a standard RTKL request form that all state and local government agencies must accept. *(See a copy of the form on page 59.)* However, townships may also create their own form to use in addition to the state form if they determine that additional information would be helpful to them in processing requests. The form should help expedite the request and ensure the accuracy of the township's response but should not be burdensome to the requester. Townships may not deny requests based on the requester's intended use of the records or motive in requesting the records.

A sample form developed by PSATS is shown on page 58.

Office of Open Records' Fee Schedule

The RTKL requires the OOR to establish a fee schedule for requests and to review these fees on a biannual basis. The current allowable fees include the following:

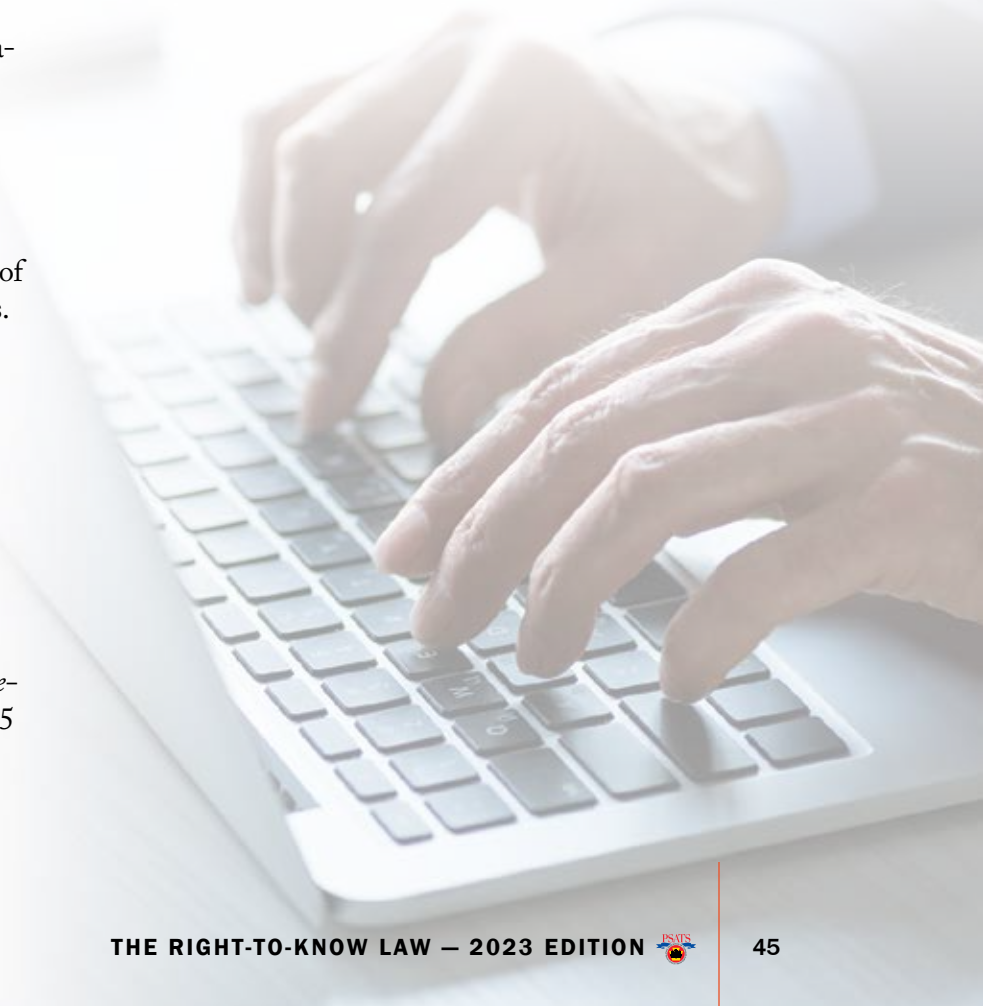
• **Photocopy** *(8½"x11" or 8½"x14" page, single-sided copy)* — Townships may charge up to $.25 per page for black and white copies up to the first 1,000 pages and $.20 for black and white copies beyond 1,000 pages. Townships may charge up to $.50 per page for color copies.

Townships should proactively use their websites to cut down on RTKL requests by posting commonly requested documents such as minutes and budgets.

• **Postage —** Up to actual USPS first-class postage costs.

• **Certification of a record —** Townships may charge a reasonable fee, not to exceed $5 to certify a record. *(This does not include notarization fees.)* A certification generally involves stamping a record with the township seal and signing a statement that the record is a true and attested copy of the original document.

• **Specialized documents, such as color copies, blueprints, nonstandard-sized documents,**



microfiche, audio, video, and other media — Townships may charge up to the actual cost of reproduction.

• **Conversion to paper —** If a record is only maintained electronically or in some other non-paper format, the township may charge the lesser of 1) the fee for duplication on paper or 2) the fee for duplication in the original media, unless the requester specifically requests the record in the more expensive medium.

• **CD/DVD —** The township may charge up to the actual cost, not to exceed $1 per disc.

Townships may not charge fees for providing records electronically unless hard copies must first be made to fill the request.

• **Requests fulfilled by fax or U.S. mail —** Townships may charge no more than the actual cost of the fax or postage.

• **Redaction —** Townships may not charge to redact a record but may charge for any copies made to redact portions of a document and make it suitable for public access. No additional copy fees may be charged.

• **Enhanced electronic access —** A township that offers enhanced electronic access to records *(such as secure, remote access to a township database),* in addition to standard inspection and duplication, may establish user fees specifically for that enhanced access. This may be a flat rate, a subscription or per-transaction fee, a fee based on the cumulative time of system access, or any other reasonable standard. However, these fees must not be established to prevent access or make a profit. Fees for enhanced electronic access must be preapproved by the OOR.

• **Staff time —** Townships may not charge for staff time spent searching for or retrieving records or responding to requests.

• **Legal review —** Townships may not charge for a legal review to determine if a record is a public record or needs to be redacted in some manner.

• **Electronically transmitted records —** Townships may not charge fees for providing records electronically unless hard copies must first be made to fill the request. For example, if a township must copy and scan pages from a bound volume before emailing them, however, it may charge the requester for those copies.

• **Fees under state laws —** If another law authorizes a township to charge a set amount for a certain type of record, it may charge no more than that amount. For example, police departments may charge up to $15 for a copy of a vehicle accident report under the Vehicle Code.

• **GIS data —** The OOR generally reviews the reasonableness of fees charged for access to GIS data on a "per parcel amount charged" basis. However, there are certain types of organization that are exempt from paying fees for GIS data.

• **Additional fees —** The RTKL prohibits townships from charging any other fees unless they incur additional costs for complying with a request. In that instance, the fees must be reasonable and documented.

• **Prepayment —** A township may require prepayment before granting a request if the fees are expected to exceed $100.

The OOR recommends that once the requested records are ready for release, the township require payment before releasing them. If the requester wishes to receive the documents by fax or mail, the written notification should include the actual cost for services and state that the records will be sent upon receipt of payment. This will avoid situations in which the township provides the requested records and the requester then fails to submit payment.

To view the OOR's fee schedule *(adopted December 30, 2022),* log onto www.openrecords.pa.gov, click on "Right-to-Know Law" at the top, and select "Fee Schedule" from the drop-down menu.

Receiving and Responding to Records Requests

Townships are required to accept written requests submitted in person and via mail, email, and fax. They may also accept requests through a website or other electronic means. Any legal resident of the United States, including a government agency, may submit a request.

Upon receiving a request, the open records officer must note on it the date of receipt and the date by which he or she must respond in writing to the request. Within five business days from receipt of the request, the officer must 1) fulfill the request; 2) deny the request; or 3) provide written notice that additional time is needed and the reason for the time extension. If the requester does none of the above, the request is deemed denied, and the requester may appeal to the OOR.

The "five business days" period refers to the days the township office is open for business. It would be good practice for those townships that are not open Monday through Friday to inform requesters of that fact upon receipt of a request so that the requesters do not prematurely file appeals of what they believe to be deemed denials of their requests when the clock has not run out.

Section 902 of the RTKL authorizes the officer to take up to ***an additional 30 calendar days*** to fulfill a request for the following reasons: 1) the request requires redaction; 2) a document must be retrieved from a remote, or off-site, location; 3) a legal review is needed to determine whether the record is subject to public disclosure; 4) a bona fide and specified staffing limitation would prevent a timely response; 5) the requester has not complied with the township's policy regarding access to records or refuses to pay the applicable fees; or 6) the extent or nature of the request precludes a response within five business days.

Also, the date that the open records officer receives a request is not necessarily the postmark date or the date or time that a faxed or emailed request arrives at the township office.

Upon receiving a request, the open records officer must note on it the date of receipt and the date by which he or she must respond in writing to the request.

Townships are required to keep a paper or electronic copy of the written request, including all documents submitted with it, until the request has been fulfilled.

Instead, this is ***the business day on which the officer receives the request.*** For example, if the township office is open Tuesday through Friday and a records request is faxed to the township office after business hours on Friday, the open records officer should note the date received as the following Tuesday, when the office is again open for business. In this example, the township would have until Wednesday of the following week to fill the request. This does not give license to township officials or employees who receive requests to intentionally delay in forwarding the requests to the open records officer to give more time to respond.

The open records officer is responsible for directing the request to the correct individuals and making sure that the request is fulfilled or denied within the mandatory timeframe.

Although the law does not require townships to track all the requests they receive and when the township responded, this is a recommended practice. In addition, many townships keep track of the amount of time they spend to fulfill requests each year. While they are not permitted to recoup those costs, doing this helps them from a time management and budgetary standpoint.

Townships are required to keep a paper or electronic copy of the written request, including all documents submitted with it, until the request has been fulfilled. If the request is denied, the written request and all related documents must be maintained for 30 days. If the denial is appealed, the written request must be kept until a final determination is issued. Townships do not need to keep an extra copy of the requested items.

Evaluating Records Requests

Upon receiving a written request, the open records officer must evaluate it to determine if the request is for a record and, if so, whether that record is open to the public.

Determining if the request is for a record

The RTKL defines a "record" as any "[i]nformation, 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." The term includes documents, papers, letters, maps, books, tapes, photographs, film or sound recordings, information stored or maintained electronically, and data-processed or image-processed documents. Emails, text messages, and video camera footage are also frequently requested records and should be analyzed like any other documents to determine if they are public records.

If the requested document is a record, ***the officer should then determine if it is a public record.***

Determining if the request is for a public record

All records are presumed to be public unless they are exempt from disclosure because they fall into one of the following categories:

• **The record is protected by another state or federal law, regulation, or judicial order.** For example, Act 50 of 1998, the Local Taxpayer Bill of Rights, prohibits the release of any information from a tax audit, tax return, or tax investigation for any tax levied under the Local Tax Enabling Act (including the earned income tax, occupational assessment tax, occupational privilege tax, amusement tax, and per capita tax) and any tax on income. Act 50 includes a fine of up to $2,500 for violations and dismissal of the employee releasing the information. *(See the Judicial Decisions and Final Determinations beginning on page 79 for more protected records.)*

• **The record is subject to a privilege, such as attorney-client or doctor-patient privilege.** Attorney-client privilege is a legal concept that protects certain communications between a client and its attorney as confidential. The township owns the privilege and can choose to exercise or waive it. However, attorney-client privilege does not apply every time a client communicates with the attorney; if the communication is not for the purpose of obtaining or providing legal advice, it will not be considered as privileged.

Open records officers should consult with their township solicitor to determine whether a specific communication is covered by this privilege. Information exchanged between a solicitor and a township's staff or board of supervisors that does not meet this standard will be considered a public record and will be subject to disclosure unless it is protected by another statute or law.

• **The record meets one of the exceptions under Section 708 of the RTKL** *(see page 69)*. For example, under Section 708(b)(7)(viii), information in a personnel file regarding discipline, demotion, or discharge is exempt. However, this exemption does not apply to the township's final action that results in demotion or discharge.

Attorney-client privilege is a legal concept that protects certain communications between a client and his attorney as confidential.

When deciding if a record falls under one of the Section 708 exceptions, townships should review the "Judicial Decisions and Final Determinations" section of this manual *(see page 79)* and consult their solicitor or the OOR with specific questions.

If the requested record is not exempt under one of these three categories, it is considered a public record and must be released.

Remember that the law does not bar townships from releasing records that are exempt under Section 708. However, township officials should determine if there would be any negative consequences for releasing a record that is exempt from public access under the law.

Responding to requests in special situations

When an open records officer is evaluating a records request, one of the following situations may arise:

• **The request asks a question,** such as why the township paved Smith Road and not Park Drive. While the township may choose to answer questions as a customer service, this is not a requirement of the law. However, if a request asks a question that the township could answer by providing a public record, it should do so. For example, if the request asks what the roadmaster's salary is, the township should provide a copy of the minutes or other public document that states the salary.

• **The request is not sufficiently specific.** Section 703 of the law requires records requests to be specific enough to allow the township to determine which records are being requested. The open records officer may deny requests that are determined to be overly broad. It is also good practice to contact the requester to determine the specific documents he or she seeks or assist the requester in narrowing the request to an appropriate scope.

• **The requested public record does not exist.** A township is not required to create a record that does not exist. If this situation arises, the open records officer should specify in the denial why the record does not exist — for instance, by stating that the township does not produce this type of record or report or the requested record was destroyed in accordance with a record retention schedule.

Townships should consider implementing a records management system to reduce the time needed to comply with RTKL requests.

The OOR will accept a statement of attestation of nonexistence of a record as "competent evidence" in appeals that you have searched in good faith to find the requested records and they do not exist. Affidavits and attestations are intended to be used during the appeals process; however, a township can attach an attestation to a denial if the township believes it will help provide additional context or clarification for the denial. This statement can be found on page 61.

Keep in mind that this attestation is subject to the penalty of perjury if a requester can prove that the person who made the attestation knowingly lied, which is a misdemeanor of the third degree, punishable by a fine of at least $1,000 under Title 18 (Crimes) of the Pennsylvania Consolidated Statutes, Section 4904. This is in addition to civil penalties within the Right-to-Know Law regarding denying a record in bad faith. If an agency denies a record in bad faith, a court may impose a civil penalty of up to $1,500 per record. If the agency still refuses to disclose the record, a court may impose a penalty of up to $500 per day until the record is disclosed.

• **The public record is in the possession of a third party.** If a third-party contractor has the requested public record, the open records officer must obtain that record, or a copy, from the third party. It is the agency's obligation to comply with the request; it cannot simply refer the request to the contractor.

Due to the nature of some requests, the open records officer may need to notify third parties so that those parties may protect their interests. The OOR requires that agencies provide notice to third parties in the following circumstances: 1) the request seeks records that affect the legal or safety interests of agency employees or third parties; 2) the request seeks records designated as containing trade secrets or confidential proprietary information; or 3) the request seeks records in the possession of a third-party contractor of the agency. In these instances, it is likely in the township's best interests to deny the request until the third party weighs in with

their position regarding the disclosure of the record.

For additional guidance, see the "Judicial Decisions and Final Determinations" section beginning on page 79.

Records Management and Retention

Townships should consider implementing a records management system to reduce the time needed to comply with RTKL requests. This includes organizing records and regularly destroying those that are no longer required under the state's record retention schedule so that documents can be accessed quickly and easily.

The RTKL does not address records retention. It does, however, protect local governments and officials that comply with a written record retention schedule from any damages or penalties under the law.

Keep in mind, though, that if the township receives a request for a record that is scheduled for destruction, it must preserve and provide access to that record before destroying it.

For more information about records retention, including copies of the state's *Retention and Disposition Schedule for Records of Pennsylvania Municipal Governments,* call the Pennsylvania Historical and Museum Commission at (717) 783-7330 or (717) 772-3257, RA-LocalGovernment@pa.gov, or log onto www.phmc.pa.gov, choose "Archives" from the top of the main page, select "Records Management" from the drop-down menu, and scroll down to "Local Government & Judicial System Services."

Denying a Records Request

A township that denies access to a record must do so in good faith and after having made a reasonable interpretation of the law. The OOR has stated that a "good faith" search means genuinely searching for applicable records and reaching out to all potential agents or entities who may be in possession of the records. Failure to search for records or failure to find records until after a litigation would be examples of a "bad faith" search. A township may not deny access to a public record based on the requester's intended use of the records or motive in seeking the records.

Section 903 requires that denials be made in writing and include the following: 1) a description of the record requested; 2) the typed or printed name, title, business address, business telephone number, and signature of the open records officer denying access; 3) the date of the response; and 4) the procedure to appeal under the RTKL.

If the township receives a request for a record that is scheduled for destruction, it must preserve and provide access to that record before destroying it.

Note that government agencies lose many appeals on technicalities, usually because they did not follow the proper procedure when issuing a denial.

Section 903 also requires that the township state specific reasons for the denial and provide the section and subsection, if applicable, of the RTKL or other law that supports the township's denial and why the cited exception applies to this situation. This is an essential part of a denial letter because the OOR will rely on these citations and arguments if the denial is appealed.

PSATS recommends that townships consult their solicitor when drafting a denial letter, particularly for types of denials not commonly invoked by the township. The solicitor can also help draft templates for denial letters invoking more commonly used exceptions.

See page 60 for a sample denial letter.

Requesters who have been denied access to a record may file an appeal with the OOR within 15 business days of the mailing date of the township's response or deemed denial.

Providing a Redacted Public Record

Certain documents may contain both public and exempt information. Section 706 authorizes townships to redact, or black out, the exempt information and grant access to the rest of the document. Redacted information could include Social Security numbers, driver's license numbers, or home, cellular, or personal phone numbers.

Please remember that if a document must be redacted, ***the township must provide a written denial letter for the portion of the record that was redacted,*** including a legal citation and reasons why the redacted information is exempt from public disclosure. The denial should note that the request is granted in part and denied in part and should state that the protected information has been redacted from the requester's copy of the document.

Appealing a Denied Request

Requesters who have been denied access to a record may file an appeal with the OOR within 15 business days of the mailing date of the township's response or deemed denial. They may also challenge the fees imposed by an agency for providing access. Appeals involving criminal investigative records must be filed with the county district attorney.

Requesters who appeal to the OOR must include a copy of their original request, a copy of the township's denial letter, reasons why they believe the requested record is public, and the reasons the township gave for denying the request.

After receiving an appeal, the OOR will assign an appeals officer who may contact the township to request additional information. ***If your township receives such a request, act quickly.*** Consult the township solicitor for assistance. Keep in mind that the appeals officer is required to make a final determination within 30 days of receiving the request and that a failure to respond in a timely fashion could reflect unfavorably on the township.

The appeals officer will send a final determination to both the requester and the township. If the township loses the appeal, it will have 30 days to release the requested records or file an appeal with the court of common pleas in the county where the township is located. If the township decides not to appeal, it must release the requested records as directed by the OOR or face possible sanctions and penalties.

If a township appeals to the court of common pleas, it will not have to release the requested records until and unless the court issues a decision requiring their release. Townships may appeal a decision of the court of common pleas to the Commonwealth Court and, if necessary, to the Pennsylvania Supreme Court. In both instances, members of PSATS' Township Legal Defense Partnership can request assistance in the form of a legal brief filed by PSATS in support of the township's argument.

Penalties for Non-compliance

If a court determines that an agency acted willfully or with wanton disregard for the law or if its position was not based on a reasonable interpretation of the law, it may award reasonable attorneys' fees and litigation costs to the requester. A township is generally protected from these penalties if it follows the RTKL requirements and acts in good faith.

The court may also award reasonable attorneys' fees and litigation costs if it finds that a requester's appeal was frivolous.

An agency also faces a civil penalty of up to $1,500 if it denied access to a record in bad faith. If an agency or official fails to promptly comply with a court order under the law, they may be assessed a civil penalty of up to $500 per day.

The court may also award reasonable attorneys' fees and litigation costs if it finds that a requester's appeal was frivolous.

Right-to-Know Law Q&A

Q: May a township limit the number of records that anyone can request at one time?
A: No. Section 1308(1) of the RTKL prohibits townships from limiting the number of records that may be requested at one time. However, a township may deny repeated requests for the same records made by the same requester.

Q: Must a township accept email requests for open records?
A: Yes. According to Section 703 of the RTKL, townships must accept written records requests by mail, fax, email, and in person. These requests must be specific enough to allow the township to identify which records the requester is seeking.

Q: How much time do we have to respond to a written records request?
A: The township must respond in writing to a written records request within five business days after receiving it. The response must fulfill the request, deny the request, or state that additional time is needed to respond and provide the reason. Townships may take up to 30 more days to fulfill or deny the request if the record must be redacted or retrieved from a remote location, undergo a legal review or the township has legitimate staffing limits.

Keep in mind that the OOR treats "business days" as those days that a particular government agency is open for business, not simply Monday through Friday.

Q: What happens if we fail to respond to a written records request within five business days?
A: The request is deemed denied, and the requester may appeal to the OOR. Failure to respond within five business days could also result in penalties and fines.

Q: What information should the township include in a denial letter to have the best chance of success on appeal?
A: Follow the procedure described in Section 903 of the RTKL, which requires that denials be in writing, and include a description of the record requested; the typed or printed name, title, business address, business telephone number, and signature of the open

records officer denying access; the date of the response; and the procedure for the requester to appeal the denial.

Section 903 also requires the open records officer to give specific reasons for the denial. This includes naming the section or subsection of the RTKL that supports the township's argument for denying access to the record and stating why this exception applies. Consider asking your solicitor to help draft this portion of the response.

A sample denial letter is provided on page 60.

Q: Must our township provide copies of public records to companies that clearly want this information for commercial purposes?
A: Yes. The RTKL makes no exception for commercial requests.

Q: Must our township respond to an anonymous or verbal records request?
A: No. The decision as to whether to respond to an anonymous or verbal records request is up to the township.

Q: If a requester seeks to receive copies of public records and inspect them, what is the township supposed to do?
A: The township may choose to provide the copies of the public records or permit their inspection, but it does not need to do both.

Q: Do we need to include an estimate of copying charges in a letter invoking a 30-day extension?
A: No, the extension letter need not include an estimate of copying charges. The estimate should represent the cost of records that are responsive and that will be produced so it should not be provided until the township determines what documents are responsive.

Q: Our state representative told us that his emails and text messages with constituents are not subject to the RTKL. Is this also true for township supervisors?
A: No. Section 708(b)(29) exempts correspondence with a member of the General Assembly, including email, from public disclosure. However, correspondence of all other public officials, including the email and text messages of township supervisors, is generally considered to be public information if it documents the transactions or activities of the township. See page 80 for more on email and text records.

Q: Are records stored on personal email accounts, cell phones, and computers potentially public records?
A: Yes. Records stored on personal email accounts, cell phones, and computers may be public records if the content documents a transaction or activity of the agency.

Q: May a resident view a township employee's personnel file?
A: No. Personnel files are exempt from public disclosure under Section 708(b)(7) and under the state's Personnel File Act (43 P.S. 1321).

Q: Is there a right to privacy in public employees' home addresses?
A: Yes. In a 2017 ruling, the Pennsylvania Supreme Court held that individuals have a constitutional right to privacy in their home address information. It also held that when agencies receive requests for home address information, they must balance the individuals' right to privacy against the public interest that would be served from disclosure of the information.

Q: Are draft minutes a public record?
A: Section 708(b)(21)(i) states that draft minutes are not a public record until the next regularly scheduled meeting. In other words, even if the draft minutes are not approved at the next regularly scheduled meeting of the board of supervisors, the draft becomes a public record. Keep in mind, however, that the draft minutes do not become the official minutes until they are approved by the board of supervisors.

Q: Our township records its public meetings to help the township secretary prepare the minutes. Are these recordings considered public records?
A: Yes, because they document transactions or activities of the township.

Q: If we record our meetings to help the secretary prepare the minutes, do we need to keep these recordings?
A: No. However, the township should have a record retention policy that states how long it will maintain these recordings. If the township wants to maintain a recording only until the draft minutes are prepared or the next public meeting, the retention schedule should state that. However, if a resident requests access to a recording on the day it is scheduled for destruction, the township must provide access before destroying the recording.

Q: How should we handle requests for copyrighted records such as blueprints and land development plans?
A: Copyrighted records that are not otherwise exempt must be made available for inspection but may not be copied by a requester without the copyright holder's consent. There is not requirement that the township seek consent.

Q: If a request seeks information that we only store in an electronic database, can we deny it?
A: Pulling information from a database is not considered creating a record. Therefore, if the database records are not otherwise exempt, they should be made available to the requester.

Q: May a requester use a personal copier or take pictures of records during in-person inspections?
A: Yes, requesters are permitted to use their own copiers, cameras, or personal digital devices to copy public records.

Q: As a public employee, do I have a right to privacy in my home address information?
A: Yes. However, when agencies get requests for home address information, they must balance the right to privacy with the public interest in disclosure. In most instances, courts have ruled that the home address information need not be disclosed.

Copyrighted records that are not otherwise exempt must be made available for inspection but may not be copied by a requester without the copyright holder's consent.

Sample Right-to-Know Policy

Please note that this sample is for your assistance only and should not be considered a legal document. As always, consult your solicitor for a legal opinion. Keep in mind that all fees must be consistent with the fee schedule established by the OOR.

Open Records Officer

The township hereby designates *(name of individual)* as the township's Open Records Officer. The Open Records Officer may be reached at *(address, phone, fax, email)*. The township hereby designates *(name of individual)* as the township's alternate Open Records Officer. The alternate Open Records Officer may be reached at *(address, phone, fax, email)*.

General

Public records shall be available for inspection, retrieval, and duplication at the township office during normal business hours *(insert normal business hours)*, with the exception of township-designated holidays.

Requests

Requests shall be made in writing to the township's Open Records Officer on a form provided by the township. Requests submitted on the Pennsylvania Office of Open Records' Standard Right-to-Know Request Form will also be accepted.

Fees

Paper copies shall be $.25 per page per side for black and white copies up to the first 1,000 pages and $.20 beyond 1,000 pages and $.50 for color copies. The certification of a record is $5 per record. Specialized documents, including but not limited to blueprints, color copies, and nonstandard-sized documents shall be charged the actual cost of production. If mailing is requested, the cost of postage will be charged. All fees must be paid before documents will be released. Prepayment is required if the total fees are estimated to exceed $100.

[may include additional fees as appropriate or refer to/incorporate the OOR's Fee Schedule]

Response

The Open Records Officer shall make a good-faith effort to provide the requested public record(s) as promptly as possible and within the RTKL's five business day timeframe. If the Open Records Officer cannot do so within five business days, he/she is permitted to exercise a 30-day extension upon notifying the requester. The Open Records Officer shall cooperate with those requesting records to review and/or duplicate original documents while taking reasonable measures to protect original documents from the possibility of theft, damage, and/or modification.

If the request is denied, the Open Records Officer will send the requester a letter stating 1) a description of the record requested; 2) the specific reasons for the denial, including a citation of supporting legal authority; 3) contact information for the Open Records Officer; 4) the date of the response; and 5) the procedure to appeal the denial.

Contact Information for Appeals

If a written request is denied, the requester has the right to file an appeal in writing to Executive Director, Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101.

Appeals of criminal records shall be made to the District Attorney of _____ County. *(Note: This sentence is only necessary for townships with a police department. Include the district attorney's name, address, and telephone number.)*

Appeals Process

Appeals must be filed within 15 business days of the mailing date of the township's response. Please note that a copy of the requester's original request and the township's denial letter must be included when filing an appeal. The law requires an appeal to include reasons why the record is a public record and to address the reasons for denial that the township stated in its denial letter.

Visit the OOR's website at www.openrecords.pa.gov for additional information on filing an appeal.

Sample Records Request Form

Date: _____

Name* _____

Address _____

City _____ **State** _____ **Zip** _____

Phone (____) _____ **Email** _____

** Although anonymous verbal or written requests may be filled, the request must be in writing and a name provided for the requester to pursue relief and remedies under Act 3 of 2008, which is known as the Right-to-Know Law.*

Records Requested:
(Please provide as much detail as possible. For more space, continue on back.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

Do you want to inspect the records at the township office? ❑ Yes ❑ No

Do you want copies of the records? ❑ Yes ❑ No

Do you want certified copies of the records? ❑ Yes ❑ No

How would you like to receive the records?

❑ Pick up – Format: _____ ❑ Mail – Format: _____

❑ Fax: (_____) _____ ❑ Email: _____

Records will be provided in the requested format, if available, after payment is received.

FOR OFFICE USE ONLY:

Request submitted by: ❑ Email ❑ Mail ❑ Fax ❑ In person

❑ Appropriate third parties notified and given opportunity to object

Fees: Copies Postage Certification

Other *(specify)* _____

Total Cost: $_____ Fees Received: ❑ Yes ❑ No

Date Request Received by Township: _____

Date Response Due to Requester: _____

Date Request Filled: _____

Records were: ❑ Picked up ❑ Faxed ❑ Mailed ❑ Emailed ❑ Uploaded

Signature of Open Records Officer: _____

pennsylvania
OFFICE OF OPEN RECORDS

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.*

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

Sample Records Request Denial Letter

(Place on township letterhead)

Date

Requester Name
Address
Telephone Number

Dear *[Requester]:*

Thank you for writing to *[township name]* with your request for township documents pursuant to the Pennsylvania Right-to-Know Law.

On *[date received by agency],* I received your request for *[describe records requested or restate the request].* Your request is denied for the following reasons, as permitted by Section 708 of the law.

[Township name] has denied your request because *[describe specific type of record]* is exempt from disclosure. *[Cite the applicable section of the Right-to-Know Law or other statute, regulation, or court case that precludes release. Include reasoning or argument why this particular record is exempt from access.]*

You have a right to appeal this denial in writing to Executive Director, Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101.

[For criminal records, direct the requester to appeal to the district attorney. Provide the district attorney's name, address, and phone number.]

If you choose to file an appeal, you must do so within 15 business days of the mailing date of this response. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. The law also requires that you state the reasons why the record is a public record and address the reasons given by the township for denying your request. Visit the Office of Open Records' website at www.openrecords.pa.gov for further information on filing an appeal.

If you have additional questions, please call me at the number below. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

SIGNATURE
[following information must be typed]
OPEN RECORDS OFFICER NAME
TITLE
TOWNSHIP ADDRESS
TOWNSHIP TELEPHONE
EMAIL ADDRESS

ATTESTATION REGARDING AGENCY POSSESSION OF RECORDS

Name of Requester: *[Name of Requester]*
Records Requested: *[Description of Request]*
Appeal Caption: *[OOR Caption and Docket Number]*

I, ***[Name of Agency Open Records Officer],*** hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge, information and belief:

1. I serve as the Agency Open Records Officer ("AORO") for the ***[NAME OF AGENCY]*** ("Agency") and am responsible for responding to Right-to-Know requests filed with the Agency.

2. In my capacity as the AORO, I am familiar with the records of the Agency.

3. Upon receipt of the request, I conducted a thorough examination of files in the possession, custody and control of the Agency for records responsive to the request underlying this appeal, specifically… ***[Provide additional details regarding likely locations of responsive records, likely custodians of responsive records, the search(es) conducted and the records or types of records that were reviewed. If the search(es) included emails or other electronically stored records, identify the location(s) searched (e.g., individual email accounts, agency servers, any other servers, service providers, etc.).]***

4. Additionally, I have inquired with relevant Agency personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession, specifically… **[*Provide additional details identifying the parties that were contacted, indicating whether the parties responded and describing the content of the response(s). If applicable, provide additional information explaining why some or all of the records do not exist or why the Agency does not possess the records.]***

5. Based upon the above-described search of the Agency's files and inquiries with relevant Agency personnel, I have made the determination that the records requested are not within the Agency's possession, custody or control.

Date: _____

Signature: _____
[Name of AORO]
Agency Open Records Officer
[Name of Agency]

The Text of the Right-to-Know Law

Act 3 of 2008

CONTENTS

CHAPTER 1. PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Right-to-Know Law.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative proceeding." A proceeding by an agency the outcome of which is required to be based on a record or documentation prescribed by law or in which a statute or regulation is particularized in application to individuals. The term includes an appeal.

"Agency." A Commonwealth agency, a local agency, a judicial agency or a legislative agency.

"Aggregated data." A tabulation of data which relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.

"Appeals officer." As follows:

(1) For a Commonwealth agency or a local agency, the appeals officer designated under section 503(a).

(2) For a judicial agency, the individual designated under section 503(b).

(3) For a legislative agency, the individual designated under section 503(c).

(4) For the Attorney General, State Treasurer, Auditor General and local agencies in possession of criminal investigative records, the individual designated under section 503(d).

"Commonwealth agency." 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.

"Confidential proprietary information." Commercial or financial information received by an agency:

(1) which is privileged or confidential; and

(2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

"Financial record." Any of the following:

(1) Any account, voucher or contract dealing with:

(i) the receipt or disbursement of funds by an agency; or

(ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property.

(2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.

(3) A financial audit report. The term does not include work papers underlying an audit.

"Homeland security." Governmental actions designed to prevent, detect, respond to and recover from acts of terrorism, major disasters and other emergencies, whether natural or manmade. The term includes activities relating to the following:

(1) emergency preparedness and response, including preparedness and response activities by volunteer medical, police, emergency management, hazardous materials and fire personnel;

(2) intelligence activities;

(3) critical infrastructure protection;

(4) border security;

(5) ground, aviation and maritime transportation security;

(6) biodefense;

(7) detection of nuclear and radiological materials; and

(8) research on next-generation securities technologies.

"Independent agency." Any board, commission or other agency or officer of the Commonwealth, that is not subject to the policy supervision and control of the Governor. The term does not include a legislative or judicial agency.

"Judicial agency." A court of the Commonwealth or any other entity or office of the unified judicial system.

"Legislative agency." Any of the following:

(1) The Senate.

(2) The House of Representatives.

(3) The Capitol Preservation Committee.

(4) The Center for Rural Pennsylvania.

(5) The Joint Legislative Air and Water Pollution Control and Conservation Committee.

(6) The Joint State Government Commission.

(7) The Legislative Budget and Finance Committee.

(8) The Legislative Data Processing Committee.

(9) The Independent Regulatory Review Commission.

(10) The Legislative Reference Bureau.

(11) The Local Government Commission.

(12) The Pennsylvania Commission on Sentencing.

(13) The Legislative Reapportionment Commission.

(14) The Legislative Office of Research Liaison.

(15) The Legislative Audit Advisory Commission.

"Legislative record." Any of the following relating to a legislative agency or a standing committee, subcommittee or conference committee of a legislative agency:

(1) A financial record.

(2) A bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber.

(3) Fiscal notes.

(4) A cosponsorship memorandum.

(5) The journal of a chamber.

(6) The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.

(7) The transcript of a public hearing when available.

(8) Executive nomination calendars.

(9) The rules of a chamber.

(10) A record of all recorded votes taken in a legislative session.

(11) Any administrative staff manuals or written policies.

(12) An audit report prepared pursuant to the act of June 30, 1970 (P.L. 442, No.151) entitled, "An act implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission."

(13) Final or annual reports required by law to be submitted to the General Assembly.

(14) Legislative Budget and Finance Committee reports.

(15) Daily legislative session calendars and marked calendars.

(16) A record communicating to an agency the official appointment of a legislative appointee.

(17) A record communicating to the appointing authority the resignation of a legislative appointee.

(18) Proposed regulations, final-form regulations and final-omitted regulations submitted to a legislative agency.

(19) The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

"Local agency." 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.

"Office of Open Records." The Office of Open Records established in section 1310.

"Personal financial information." An individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances.

"Privilege." The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.

"Public record." A record, including a financial record, of a Commonwealth or local agency that:

(1) is not exempt under section 708;

(2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or

(3) is not protected by a privilege.

"Record." 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. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

"Requester." A person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency.

"Response." Access to a record or an agency's written notice to a requester granting, denying or partially granting and partially denying access to a record.

"Social services." Cash assistance and other welfare benefits, medical, mental and other health care services, drug and alcohol treatment, adoption services, vocational services and training, occupational training, education services, counseling services, workers' compensation services and unemployment compensation services, foster care services, services for the elderly, services for individuals with disabilities and services for victims of crimes and domestic violence.

"State-affiliated entity." A Commonwealth authority or Commonwealth entity. The term includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Educational Facilities Authority. The term does not include a State-related institution.

"State-related institution." Includes:

(1) Temple University.

(2) The University of Pittsburgh.

(3) The Pennsylvania State University.

(4) Lincoln University.

"Terrorist act." A violent or life-threatening act that violates the criminal laws of the United States or any state and appears to be intended to:

(1) intimidate or coerce a civilian population;

(2) influence the policy of a government; or

(3) affect the conduct of a government by mass destruction, assassination or kidnapping.

"Trade secret." Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

(1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.

CHAPTER 3. REQUIREMENTS AND PROHIBITIONS

Section 301. Commonwealth agencies.

(a) Requirement. — A Commonwealth agency shall provide public records in accordance with this act.

(b) Prohibition. — A Commonwealth agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.

Section 302. Local agencies.

(a) Requirement. — A local agency shall provide public records in accordance with this act.

(b) Prohibition. — A local agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.

Section 303. Legislative agencies.

(a) Requirement. — A legislative agency shall provide legislative records in accordance with this act.

(b) Prohibition. — A legislative agency may not deny a requester access to a legislative record due to the intended use of the legislative record by the requester.

Section 304. Judicial agencies.

(a) Requirement. — A judicial agency shall provide financial records in accordance with this act or any rule or order of court providing equal or greater access to the records.

(b) Prohibition. — A judicial agency may not deny a requester access to a financial record due to the intended use of the financial record by the requester.

Section 305. Presumption.

(a) General rule. — A record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record. The presumption shall not apply if:

(1) the record is exempt under section 708;

(2) the record is protected by a privilege; or

(3) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.

(b) Legislative records and financial records. — A legislative record in the possession of a legislative agency and a financial record in the possession of a judicial agency shall be presumed to be available in accordance with this act. The presumption shall not apply if:

(1) the record is exempt under section 708;

(2) the record is protected by a privilege; or

(3) the record is exempt from disclosure under any other Federal or State law, regulation or judicial order or decree.

Section 306. Nature of document.

Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.

CHAPTER 5. ACCESS

Section 501. Scope of chapter.

This chapter applies to all agencies.

Section 502. Open-records officer.

(a) Establishment. —

(1) An agency shall designate an official or employee to act as the open-records officer.

(2) For a legislative agency other than the Senate or the House of Representatives, the open-records officer designated by the Legislative Reference Bureau shall serve as the open-records officer. Notwithstanding paragraph (1), a political party caucus of a legislative agency may appoint an open-records officer under this section.

(b) Functions. —

(1) The open-records officer shall receive requests submitted to the agency under this act, direct requests to other appropriate persons within the agency or to appropriate persons in another agency, track the agency's progress in responding to requests and issue interim and final responses under this act.

(2) Upon receiving a request for a public record, legislative record or financial record, the open-records officer shall do all of the following:

(i) Note the date of receipt on the written request.

(ii) Compute the day on which the five-day period under section 901 will expire and make a notation of that date on the written request.

(iii) Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled. If the request is denied, the written request shall be maintained for 30 days or, if an appeal is filed, until a final determination is issued under section 1101(b) or the appeal is deemed denied.

(iv) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester and a copy of other communications. This subparagraph shall only apply to Commonwealth agencies.

Section 503. Appeals officer.

(a) Commonwealth agencies and local agencies. — Except as provided in subsection (d), the Office of Open Records established under section 1310 shall designate an appeals officer under section 1101(a)(2) for all:

(1) Commonwealth agencies; and

(2) local agencies.

(b) Judicial agencies. — A judicial agency shall designate an appeals officer to hear appeals under Chapter 11.

(c) Legislative agencies. —

(1) Except as set forth in paragraph (2), the Legislative Reference Bureau shall designate an appeals officer to hear appeals under Chapter 11 for all legislative agencies.

(2) Each of the following shall designate an appeals officer to hear appeals under Chapter 11:

(i) The Senate.

(ii) The House of Representatives.

(d) Law enforcement records and Statewide officials. —

(1) The Attorney General, State Treasurer and Auditor General shall each designate an appeals officer to hear appeals under Chapter 11.

(2) The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.

Section 504. Regulations and policies.

(a) Authority. — An agency may promulgate regulations and policies necessary for the agency to implement this act. The Office of Open Records may promulgate regulations relating to appeals involving a Commonwealth agency or local agency.

(b) Posting. — The following information shall be posted at each agency and, if the agency maintains an Internet website, on the agency's Internet website:

(1) Contact information for the open-records officer.

(2) Contact information for the Office of Open Records or other applicable appeals officer.

(3) A form which may be used to file a request.

(4) Regulations, policies and procedures of the agency relating to this act.

Section 505. Uniform form.

(a) Commonwealth and local agencies. — The Office of Open Records shall develop a uniform form which shall be accepted by all Commonwealth and local agencies in addition to any form used by the agency to file a request under this act. The uniform form shall be published in the Pennsylvania Bulletin and on the Office of Open Record's Internet website.

(b) Judicial agencies. — A judicial agency or the Administrative Office of Pennsylvania Courts may develop a form to request financial records or may accept a form developed by the Office of Open Records.

(c) Legislative agencies. — A legislative agency may develop a form to request legislative records or may accept the form developed by the Office of Open Records.

Section 506. Requests.

(a) Disruptive requests. —

(1) An agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.

(2) A denial under this subsection shall not restrict the ability to request a different record.

(b) Disaster or potential damage. —

(1) An agency may deny a requester access:

(i) when timely access is not possible due to fire, flood or other disaster; or

(ii) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.

(2) To the extent possible, the contents of a record under this subsection shall be made accessible to a requester even when the record is physically unavailable.

(c) Agency discretion. — An agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this chapter, if all of the following apply:

(1) Disclosure of the record is not prohibited under any of the following:

(i) Federal or State law or regulation.

(ii) Judicial order or decree.

(2) The record is not protected by a privilege.

(3) The agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

(d) Agency possession. —

(1) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act.

(2) Nothing in this act shall be construed to require access to any other record of the party in possession of the public record.

(3) A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency. Upon a determination that the record is subject to access under this act, the open records officer shall assess the duplication fee established under section 1307(b) and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.

Section 507. Retention of records.

Nothing in this act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of an agency established pursuant to law, regulation, policy or other directive.

CHAPTER 7. PROCEDURE

Section 701. Access.

(a) General rule. — Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this act. A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records, legislative records or financial records shall be available for access during the regular business hours of an agency.

(b) Construction. — Nothing in this act shall be construed to require access to any computer either of an agency or individual employee of an agency.

Section 702. Requests.

Agencies may fulfill verbal, written or anonymous verbal or written requests for access to records under this act. If the requester wishes to pursue the relief and remedies provided for in this act, the request for access to records must be a written request.

Section 703. Written requests.

A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by agency rules, any other electronic means. A written request must be addressed to the open-records officer designated pursuant to section 502. Employees of an agency shall be directed to forward requests for records to the open-records officer. A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the agency should address its response. A written request need not include any explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law.

Section 704. Electronic access.

(a) General rule. — In addition to the requirements of section 701, an agency may make its records available through any publicly accessible electronic means.

(b) Response. —

(1) In addition to the requirements of section 701, an agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the agency will provide access to inspect the record electronically.

(2) If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the agency notification, submit a written request to the agency to have the record converted to paper. The agency shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper.

Section 705. Creation of record.

When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.

Section 706. Redaction.

If an agency determines that a public record, legislative record or financial record contains information which is subject to access, as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be

redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

Section 707. Production of certain records.

(a) General rule. — If, in response to a request, an agency produces a record that is not a public record, legislative record or financial record, the agency shall notify any third party that provided the record to the agency, the person that is the subject of the record and the requester.

(b) Requests for trade secrets. — An agency shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five business days of receipt of the request for the record. The third party shall have five business days from receipt of notification from the agency to provide input on the release of the record. The agency shall deny the request for the record or release the record within ten business days of the provision of notice to the third party and shall notify the third party of the decision.

(c) Transcripts. —

(1) Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester by the agency stenographer or a court reporter, in accordance with agency procedure or an applicable contract.

(2) Following an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester in accordance with the duplication rates established in section 1307(b).

Section 708. Exceptions for public records.

(a) Burden of proof. —

(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.

(2) The burden of proving that a legislative record is exempt from public access shall be on the legislative agency receiving a request by a preponderance of the evidence.

(3) The burden of proving that a financial record of a judicial agency is exempt from public access shall be on the judicial agency receiving a request by a preponderance of the evidence.

(b) Exceptions. — Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

(1) A record the disclosure of which:

(i) would result in the loss of Federal or State funds by an agency or the Commonwealth; or

(ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(ii) lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.

(5) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

(6) (i) The following personal identification information:

(A) A record containing all or part of a person's Social Security number; driver's license number; personal finan-

cial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.

(B) A spouse's name; marital status, beneficiary or dependent information.

(C) The home address of a law enforcement officer or judge.

(ii) Nothing in this paragraph shall preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a public official or an agency employee.

(iii) An agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

(7) The following records relating to an agency employee:

(i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.

(ii) A performance rating or review.

(iii) The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.

(iv) The employment application of an individual who is not hired by the agency.

(v) Workplace support services program information.

(vi) Written criticisms of an employee.

(vii) Grievance material, including documents related to discrimination or sexual harassment.

(viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.

(ix) An academic transcript.

(8) (i) A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.

(ii) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.

(9) The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency.

(10)(i) A record that reflects:

(A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

(B) The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.

(ii) Subparagraph (i)(A) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.

(iii) This paragraph shall not apply to a written or Internet application or other document that has been submitted to request Commonwealth funds.

(iv) This paragraph shall not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion.

(11) A record that constitutes or reveals a trade secret or confidential proprietary information.

(12) Notes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.

(13) Records that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or per-

sonal identifying information relating to a donor.

(14) Unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material and scholarly correspondence of a community college or an institution of the State System of Higher Education or a faculty member, staff employee, guest speaker or student thereof.

(15)(i) Academic transcripts

(ii) Examinations, examination questions, scoring keys or answers to examinations. This subparagraph shall include licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education.

(16) A record of an agency relating to or resulting in a criminal investigation, including:

(i) Complaints of potential criminal conduct other than a private criminal complaint.

(ii) Investigative materials, notes, correspondence, videos and reports.

(iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.

(iv) A record that includes information made confidential by law or court order.

(v) Victim information, including any information that would jeopardize the safety of the victim.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

(B) Deprive a person of the right to a fair trial or an impartial adjudication.

(C) Impair the ability to locate a defendant or codefendant.

(D) Hinder an agency's ability to secure an arrest, prosecution or conviction.

(E) Endanger the life or physical safety of an individual.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. § 3754(b) (relating to accident prevention investigations).

(17) A record of an agency relating to a noncriminal investigation, including:

(i) Complaints submitted to an agency.

(ii) Investigative materials, notes, correspondence and reports.

(iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L. 1559, No.169), known as the Whistleblower Law.

(iv) A record that includes information made confidential by law.

(v) Work papers underlying an audit.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

(B) Deprive a person of the right to an impartial adjudication.

(C) Constitute an unwarranted invasion of privacy.

(D) Hinder an agency's ability to secure an administrative or civil sanction.

(E) Endanger the life or physical safety of an individual.

(18)(i) Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.

(ii) This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

(19) DNA and RNA records.

(20) An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

(21)(i) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency.

(ii) Minutes of an executive session and any record of discussions held in executive session.

(22)(i) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:

(A) The leasing, acquiring or disposing of real property or an interest in real property.

(B) The purchase of public supplies or equipment included in the real estate transaction.

(C) Construction projects.

(ii) This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

(23) Library and archive circulation and order records of an identifiable individual or groups of individuals.

(24) Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.

(25) A record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.

(26) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

(27) A record or information relating to a communication between an agency and its insurance carrier, administrative service organization or risk management office. This paragraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.

(28) A record or information:

(i) identifying an individual who applies for or receives social services; or

(ii) relating to the following:

(A) the type of social services received by an individual;

(B) an individual's application to receive social services, including a record or information related to an agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the agency and the identity of a caregiver or others who provide services to the individual; or

(C) eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

(29) Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbyist disclosure).

(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger.

(c) Financial records. — The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) or (17). An agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.

(d) Aggregated data. — The exceptions set forth in subsection (b) shall not apply to aggregated data maintained or received by an agency, except for data protected under subsection (b)(1), (2), (3), (4) or (5).

(e) Construction. — In determining whether a record is exempt from access under this section, an agency shall consider and apply each exemption separately.

CHAPTER 9. AGENCY RESPONSE

Section 901. General rule.

Upon receipt of a written request for access to a record, an agency shall make a good-faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency. If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.

Section 902. Extension of time.

(a) Determination. — Upon receipt of a written request for access, the open-records officer for an agency shall determine if one of the following applies:

(1) the request for access requires redaction of a record in accordance with section 706;

(2) the request for access requires the retrieval of a record stored in a remote location;

(3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;

(4) a legal review is necessary to determine whether the record is a record subject to access under this act;

(5) the requester has not complied with the agency's policies regarding access to records;

(6) the requester refuses to pay applicable fees authorized by this act; or

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

(b) Notice. —

(1) Upon a determination that one of the factors listed in subsection (a) applies, the open-records officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a).

(2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice.

(3) If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

Section 903. Denial.

If an agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

(1) A description of the record requested.

(2) The specific reasons for the denial, including a citation of supporting legal authority.

(3) The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.

(4) Date of the response.

(5) The procedure to appeal the denial of access under this act.

Section 904. Certified copies.

If an agency's response grants a request for access, the agency shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees under section 1307.

Section 905. Record discard.

If an agency response to a requester states that copies of the requested records are available for delivery at the office of an agency and the requester fails to retrieve the records within 60 days of the agency's response, the agency may dispose of any copies which have not been retrieved and retain any fees paid to date.

CHAPTER 11. APPEAL OF AGENCY DETERMINATION

Section 1101. Filing of appeal.

(a) Authorization. —

(1) If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under section 503(d) within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

(2) Except as provided in section 503(d), in the case of an appeal of a decision by a Commonwealth agency or local agency, the Office of Open Records shall assign an appeals officer to review the denial.

(b) Determination. —

(1) Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).

(2) If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.

(3) Prior to issuing a final determination, a hearing may be conducted. The determination by the appeals officer shall be a final order. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the agency.

(c) Direct interest. — \

(1) A person other than the agency or requester with a direct interest in the record subject to an appeal under this section

may, within 15 days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the requester's or agency's position.

(2) The appeals officer may grant a request under paragraph (1) if:

(i) no hearing has been held;

(ii) the appeals officer has not yet issued its order; and

(iii) the appeals officer believes the information will be probative.

(3) Copies of the written request shall be sent to the agency and the requester.

Section 1102. Appeals officers.

(a) Duties. — An appeals officer designated under section 503 shall do all of the following:

(1) Set a schedule for the requester and the open-records officer to submit documents in support of their positions.

(2) Review all information filed relating to the request. The appeals officer may hold a hearing. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.

(3) Consult with agency counsel as appropriate.

(4) Issue a final determination on behalf of the Office of Open Records or other agency.

(b) Procedures. — The Office of Open Records, a judicial agency, a legislative agency, the Attorney General, Auditor General, State Treasurer or district attorney may adopt procedures relating to appeals under this chapter.

(1) If an appeal is resolved without a hearing, 1 Pa. Code Pt. II (relating to general rules of administrative practice and procedure) does not apply except to the extent that the agency has adopted these chapters in its regulations or rules under this subsection.

(2) If a hearing is held, 1 Pa. Code Pt. II shall apply unless the agency has adopted regulations, policies or procedures to the contrary under this subsection.

(3) In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.

CHAPTER 13. JUDICIAL REVIEW

Section 1301. Commonwealth agencies, legislative agencies and judicial agencies.

(a) General rule. — Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a Commonwealth agency, a legislative agency or a judicial agency issued under section 1101(b) or the date a request for access is deemed denied, a requester or the agency may file a petition for review or other document as might be required by rule of court with the Commonwealth Court. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay. — A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

Section 1302. Local agencies.

(a) General rule. — Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) or of the date a request for access is deemed denied, a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay. — A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

Section 1303. Notice and records.

(a) Notice. — An agency, the requester and the Office of Open Records or designated appeals officer shall be served notice of actions commenced in accordance with section 1301 or 1302 and shall have an opportunity to respond in accordance with applicable court rules.

(b) Record on appeal. — The record before a court shall consist of the request, the agency's response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.

Section 1304. Court costs and attorney fees.

(a) Reversal of agency determination. — If a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the court finds either of the following:

(1) the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act; or

(2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law.

(b) Sanctions for frivolous requests or appeals. — The court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to an agency or the requester if the court finds that the legal challenge under this chapter was frivolous.

(c) Other sanctions. — Nothing in this act shall prohibit a court from imposing penalties and costs in accordance with applicable rules of court.

Section 1305. Civil penalty.

(a) Denial of access. — A court may impose a civil penalty of not more than $1,500 if an agency denied access to a public record in bad faith.

(b) Failure to comply with court order. — An agency or public official who does not promptly comply with a court order under this act is subject to a civil penalty of not more than $500 per day until the public records are provided.

Section 1306. Immunity.

(a) General rule. — Except as provided in sections 1304 and 1305 and other statutes governing the release of records, no agency, public official or public employee shall be liable for civil penalties resulting from compliance or failure to comply with this act.

(b) Schedules. — No agency, public official or public employee shall be liable for civil or criminal damages or penalties under this act for complying with any written public record retention and disposition schedule.

Section 1307. Fee limitations.

(a) Postage. — Fees for postage may not exceed the actual cost of mailing.

(b) Duplication. —

(1) Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication shall be established:

(i) by the Office of Open Records, for Commonwealth agencies and local agencies;

(ii) by each judicial agency; and

(iii) by each legislative agency.

(2) The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.

(3) Fees for local agencies may reflect regional price differences.

(4) The following apply to complex and extensive data sets, including geographic information systems or integrated property assessment lists.

(i) Fees for copying may be based on the reasonable market value of the same or closely related data sets.

(ii) Subparagraph (i) shall not apply to:

(A) a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly newspaper publication, press association or radio or television station, for the purpose of obtaining information for publication or broadcast; or

(B) a request by a nonprofit organization for the conduct of educational research.

(iii) Information obtained under subparagraph (ii) shall be subject to paragraphs (1), (2) and (3).

(c) Certification. — An agency may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.

(d) Conversion to paper. — If a record is only maintained electronically or in other nonpaper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media as provided by subsection (b) unless the requester specifically requests for the record to be duplicated in the more expensive medium.

(e) Enhanced electronic access. — If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by this act, the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by this act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system

access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency.

(f) Waiver of fees. — An agency may waive the fees for duplication of a record, including, but not limited to, when:

(1) the requester duplicates the record; or

(2) the agency deems it is in the public interest to do so.

(g) Limitations. — Except as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this act.

(h) Prepayment. — Prior to granting a request for access in accordance with this act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed $100.

Section 1308. Prohibition.

A policy or regulation adopted under this act may not include any of the following:

(1) A limitation on the number of records which may be requested or made available for inspection or duplication.

(2) A requirement to disclose the purpose or motive in requesting access to records.

Section 1309. Practice and procedure.

The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this act unless specifically adopted by regulation or policy.

Section 1310. Office of Open Records.

(a) Establishment. — There is established in the Department of Community and Economic Development an Office of Open Records. The office shall do all of the following:

(1) Provide information relating to the implementation and enforcement of this act.

(2) Issue advisory opinions to agencies and requesters.

(3) Provide annual training courses to agencies, public officials and public employees on this act and 65 Pa.C.S. Ch. 7 (relating to open meetings).

(4) Provide annual, regional training courses to local agencies, public officials and public employees.

(5) Assign appeals officers to review appeals of decisions by Commonwealth agencies or local agencies, except as provided in section 503(d), filed under section 1101 and issue orders and opinions. The office shall employ or contract with attorneys to serve as appeals officers to review appeals and, if necessary, to hold hearings on a regional basis under this act. Each appeals officer must comply with all of the following:

(i) Complete a training course provided by the Office of Open Records prior to acting as an appeals officer.

(ii) If a hearing is necessary, hold hearings regionally as necessary to ensure access to the remedies provided by this act.

(iii) Comply with the procedures under section 1102(b).

(6) Establish an informal mediation program to resolve disputes under this act.

(7) Establish an Internet website with information relating to this act, including information on fees, advisory opinions and decisions and the name and address of all open records officers in this Commonwealth.

(8) Conduct a biannual review of fees charged under this act.

(9) Annually report on its activities and findings to the Governor and the General Assembly. The report shall be posted and maintained on the Internet website established under paragraph (7).

(b) Executive director. — Within 90 days of the effective date of this section, the Governor shall appoint an executive director of the office who shall serve for a term of six years. Compensation shall be set by the Executive Board established under section 204 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929. The executive director may serve no more than two terms.

(c) Limitation. — The executive director shall not seek election nor accept appointment to any political office during his tenure as executive director and for one year thereafter.

(d) Staffing. — The executive director shall appoint attorneys to act as appeals officers and additional clerical, technical and professional staff as may be appropriate and may contract for additional services as necessary for the performance of the executive director's duties. The compensation of attorneys and other staff shall be set by the Executive Board. The appointment of attorneys shall not be subject to the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act.

(e) Duties. — The executive director shall ensure that the duties of the Office of Open Records are carried out and shall monitor cases appealed to the Office of Open Records.

(f) Appropriation. — The appropriation for the office shall be in a separate line item and shall be under the jurisdiction of the executive director.

CHAPTER 15. STATE-RELATED INSTITUTIONS

Section 1501. Definition.

As used in this chapter, "State-related institution" means any of the following:

(1) Temple University.

(2) The University of Pittsburgh.

(3) The Pennsylvania State University.

(4) Lincoln University.

Section 1502. Reporting.

No later than May 30 of each year, a State-related institution shall file with the Governor's Office, the General Assembly, the Auditor General and the State Library the information set forth in section 1503.

Section 1503. Contents of report.

The report required under section 1502 shall include the following:

(1) Except as provided in paragraph (4), all information required by Form 990 or an equivalent form, of the United States Department of the Treasury, Internal Revenue Service, entitled the Return of Organization Exempt from Income Tax, regardless of whether the State-related institution is required to file the form by the Federal Government.

(2) The salaries of all officers and directors of the State-related institution.

(3) The highest 25 salaries paid to employees of the institution that are not included under paragraph (2).

(4) The report shall not include information relating to individual donors.

Section 1504. Copies and posting.

A State-related institution shall maintain, for at least seven years, a copy of the report in the institution's library and shall provide free access to the report on the institution's Internet website.

CHAPTER 17. STATE CONTRACT INFORMATION

Section 1701. Submission and retention of contracts.

(a) General rule. — Whenever any Commonwealth agency, legislative agency or judicial agency shall enter into any contract involving any property, real, personal or mixed of any kind or description or any contract for personal services where the consideration involved in the contract is $5,000 or more, a copy of the contract shall be filed with the Treasury Department within ten days after the contract is fully executed on behalf of the Commonwealth agency, legislative agency or judicial agency or otherwise becomes an obligation of the Commonwealth agency, legislative agency or judicial agency. The provisions of this chapter shall not apply to contracts for services protected by a privilege. The provisions of this chapter shall not apply to a purchase order evidencing fulfillment of an existing contract but shall apply to a purchase order evidencing new obligations. The following shall apply:

(1) Each Commonwealth agency, legislative agency and judicial agency shall submit contracts in a form and structure mutually agreed upon by the Commonwealth agency, legislative agency or judicial agency and the State Treasurer.

(2) The Treasury Department may require each Commonwealth agency, legislative agency or judicial agency to provide a summary with each contract, which shall include the following:

(i) Date of execution.

(ii) Amount of the contract.

(iii) Beginning date of the contract.

(iv) End date of the contract, if applicable.

(v) Name of the agency entering into the contract.

(vi) The name of all parties executing the contract.

(vii) Subject matter of the contract.

Each agency shall create and maintain the data under this paragraph in an ASCII-delimited text file, spreadsheet file or other file provided by Treasury Department regulation.

(b) Retention. — Every contract filed pursuant to subsection (a) shall remain on file with the Treasury Department for a period of not less than four years after the end date of the contract.

(c) Accuracy. — Each Commonwealth agency, legislative agency and judicial agency is responsible for verifying the accuracy and completeness of the information that it submits to the State Treasurer. The contract provided to the Treasury Department

pursuant to this chapter shall be redacted in accordance with applicable provisions of this act by the agency filing the contract to the Treasury Department.

(d) Applicability. — The provisions of this act shall not apply to copies of contracts submitted to the Treasury Department, the Office of Auditor General or other agency for purposes of audits and warrants for disbursements under section 307, 401, 402 or 403 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code.

Section 1702. Public availability of contracts.

(a) General rule. — The Treasury Department shall make each contract filed pursuant to section 1701 available for public inspection either by posting a copy of the contract on the Treasury Department's publicly accessible Internet website or by posting a contract summary on the department's publicly accessible Internet website.

(b) Posting. — The Treasury Department shall post the information received pursuant to this chapter in a manner that allows the public to search contracts or contract summaries by the categories enumerated in section 1701(a)(2).

(c) Request to review or receive copy of contract. — The Treasury Department shall maintain a page on its publicly accessible Internet website that includes instructions on how to review a contract on the Internet website.

(d) Paper copy. — A paper copy of a contract may be requested from the agency that executed the contract in accordance with this act.

CHAPTER 31. MISCELLANEOUS PROVISIONS

Section 3101. Applicability.

This act shall apply to requests for information made after December 31, 2008.

Section 3101.1. Relation to other laws.

If the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply.

Section 3101.2. Severability.

All provisions of this act are severable.

Section 3102. Repeals.

Repeals are as follows:

(1) The General Assembly declares as follows:

(i) The repeal under paragraph (2)(i) is necessary to effectuate Chapter 17.

(ii) The repeals under paragraph (2)(ii) and (iii) are necessary to effectuate this act.

(2) The following acts and parts of acts are repealed:

(i) Section 1104 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929.

(ii) The act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law.

(iii) 62 Pa.C.S. § 106.

Section 3103. References.

Notwithstanding 1 PA.C.S. § 1937(b) (relating to references to statutes and regulations), a reference in a statute or regulation to the act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law, shall be deemed a reference to this act.

Section 3104. Effective date.

This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) Sections 101, 102 and 1310.

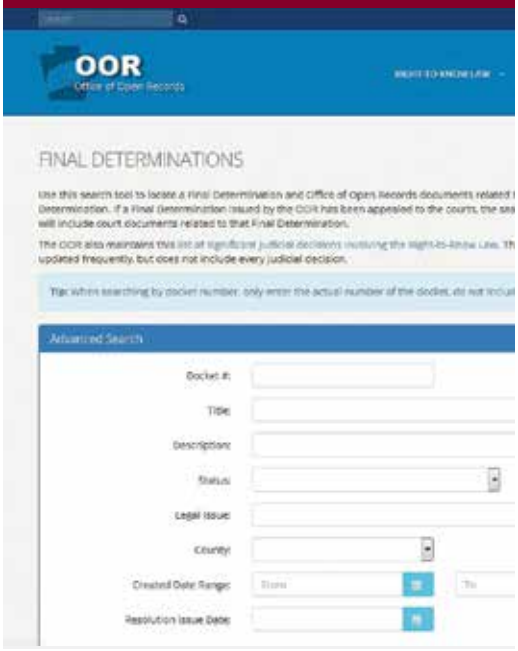
(ii) This section.

(2) Chapters 15 and 17 and sections 3102(1)(i) and 3102(2)(i) shall take effect July 1, 2008.

(3) The remainder of this act shall take effect January 1, 2009.

Right-to-Know Law Judicial Decisions and Final Determinations

(through January 2023)



Any requester who is denied access to a record by a "Commonwealth agency" or "local agency," as those terms are defined in Section 102 of the RTKL, may appeal to the OOR within 15 days of the denial. The OOR is charged with issuing final determinations on these appeals, which are binding on the parties. Parties may appeal decisions of the OOR to the Commonwealth Court or the appropriate courts of common pleas, depending on whether the request was submitted to a Commonwealth or local agency.

How to read judicial decisions and final determinations

Judicial decisions and final determinations may be specific to the facts at issue and are based on the arguments and citations provided by the requester or the Commonwealth or local agency that issued the denial, along with any supporting documentation. The OOR may determine that a record is public because the reason cited in the denial is not applicable or the agency cited the wrong section or failed to comply with the RTKL's requirements for denying access to a record. However, another section of the RTKL, another statute, or a court decision might also protect that type of record from disclosure. In making its decision, the OOR is prohibited from referencing a different citation or court case that may protect the record in question from disclosure. Therefore, while final determinations can provide valuable guidance about how the OOR rules on types of records or questions, they do not guarantee the same result for a similar record in a different situation.

If your township questions whether a requested record is public, you can also consult with your solicitor.

About judicial decisions and final determinations

This guide is intended to serve as a resource for your township and your solicitor as you research relevant judicial decisions and final determinations.

Please note that the Commonwealth Court and Supreme Court decisions referenced in this manual are controlling on a statewide basis. Decisions from county courts of common pleas are only controlling in the county in which they were made but may still have some persuasive value, especially when the issue is one of first impression for the courts.

Just because records are created on or sent and/or received from a township-issued device does not mean that they are automatically "public records."

Judicial decisions and final determinations

The following judicial decisions and final determinations are listed according to the section of the law they apply to, if any.

Section 102 – Definitions

Records on Personal Computers, Cell Phones, and Email Accounts May Be "Public Records"

Emails documenting agency transactions or activities that were created or received in connection with agency business may be subject to disclosure even if they are stored on personal computers, cell phones, and/or email accounts. ***See Mollick v. Township of Worcester,*** 32 A.3d 859 (Pa.Cmwlth. 2011) (ordering disclosure of emails transmitted between township supervisors on their personal computers and/or via their personal email accounts); ***Barkeyville Borough v. Stearns,*** 35 A.3d 91 (Pa.Cmwlth. 2012) (ruling that emails exchanged between borough council members using their personal computers must be disclosed and stating that if council members are allowed "to conduct business through personal email accounts to evade the RTKL, the law would serve no function and would result in all public officials conducting public business via personal email."); ***Paint Twp. v. Clark,*** 109 A.3d 796 (Pa.Cmwlth. 2015) (ordering disclosure of records on a township supervisor's cell phone because he "cannot privatize his public correspondence," but not requiring the restoration of deleted records from the cell phone because "[t]here is a dramatic difference between drawing information known to exist from a computer database in a 'format available to the agency'. . . and where, as here, it has been established that the information does not exist in any ascertainable format.").

However, just because records are created on or sent and/or received from a township-issued device does not mean that they are automatically "public records." ***See Easton Area School Dist. v. Baxter,*** 35 A.3d 1259 (Pa.Cmwlth. 2012) (emails sent or received using an email address provided by an agency or stored on an agency-owned computer were not "public records" because they were personal in nature and thus did not document a transaction or activity of the agency); ***Pennsylvania Office of Atty. Gen. v. Philadelphia Inquirer,*** 127 A.3d 57 (Pa.Cmwlth. 2015) (rejecting argument that receipt and transmission of pornographic emails by employees of the Office of Attorney General (OAG) were an "activity" of an agency because that argument "would mean that if an employee sends what are purportedly pornographic emails, uses the government email for business, or just overuses the email system, those emails would also be subject to disclosure" and holding that "fact that they were sent, received or retained in violation of OAG policy does not transform what was not a public record into a public record under the RTKL."); ***Pennsylvania Office of Attorney General v. Bumsted,*** 134 A.3d 1204 (Pa.Cmwlth. 2016) (although requested records may violate agency policy, the agency is not required to disclose records simply because an agency email address is involved).

Records Subject to Attorney-Client "Privilege"

The attorney-client privilege applies to protect against disclosure of client identities and descriptions of legal services in responding to requests. It may be necessarily to conduct line-by-line analysis of attorney invoices to determine whether the disclosure of descriptions of legal services rendered would result in disclosure of privileged information. ***Levy v. Senate of Pennsylvania,*** 65 A.3d 361 (Pa. 2013).

General descriptions of legal services are not protected by the attorney work product privilege because they reveal nothing about litigation strategy. In ***Levy v. Senate of Pennsylvania,*** 94 A.3d 436 (Pa.Cmwlth. 2014), the court stated that where the "taxpayers are footing the bill for the legal services, they are entitled to know the general nature of the services provided for the fees charged."

Agencies cannot be compelled to disclosure information in attorney case files because that would infringe upon the Supreme Court's constitutional authority to regulate the practice of law. In addition, an ongoing request for correspondence regarding settlement "impermissibly intrudes into the conduct of litigation" and would "interfere with the courts' sole control over the conduct of litigation." ***City of Pittsburgh v. Silver,*** 50 A.3d 296 (Pa.Cmwlth. 2012).

Where an agency holds a common interest with a third party, the party holding the privilege must assert it. ***Pennsylvania Public Utility Comm'n v. Sunrise Energy,*** LLC, 177 A.3d 438 (Pa.Cmwlth. 2018). It is currently unclear as to whether the privilege may be waived if records are shared with a non-party to litigation, even if the non-party files an amicus curiae brief, or whether the common interest document applies to shield the documents from disclosure.

In ***Hann v. Wilmington Twp.,*** No. 593 C.D. 2021, 2023 WL 18520 (Pa.Cmwlth. Jan. 3, 2023), the court rejected a RTKL appeal seeking records between the township and its attorneys. One of the arguments made by the requester was that the crime-fraud exception applied to require production of records protected by the attorney-client privilege because the township allegedly violated the Sunshine Act in hiring the attorney. The court also rejected an argument that the automatic stay on release of records pending appeal because to "require disclosure would make the Township waive its claim of privilege and cause 'confusion for the parties and courts' where parts of a Final Determination are enforced and others disputed."

Records That Are "of" Both Local Agencies and Judicial Agencies Should Be Directed to Judicial Agencies

Local agencies that receive requests for records that might also be "of" a judicial agency should direct the requests to the judicial agency to avoid potential separation of powers violations. In order to be "of" the judiciary, they must relate to an exercise of judicial authority. Because the cell phone records at issue contained information dealing with the disbursement of agency funds, they also documented the judges' activities, making them judicial records. ***Grine v. County of Centre,*** 138 A.3d 88 (Pa.Cmwlth. 2016).

Records Identifying PAC Contributions Not "Public Records"

Records showing the amount of union contributions that Commonwealth employees made through agency payroll deductions are exempt from disclosure under the RTKL. In ***Pennsylvanians for Union Reform v. Pennsylvania Office of Administration,*** 129 A.3d 1246 (Pa.Cmwlth. 2015), the court found that the Election Code's contribution disclosure requirements maintain individual associational rights "while protecting the larger political process." If the RTKL were deemed to override the Election Code, "the General Assembly's purpose would be subverted." Therefore, disclosing records naming individual contributors and the amounts of their

Agencies cannot be compelled to disclose information in attorney case files because that would infringe upon the Supreme Court's constitutional authority to regulate the practice of law.

Numerous county courts of common pleas have previously held that volunteer fire companies are not subject to the RTKL.

contributions is not necessary to satisfy the public interest in discovering how public employees use government resources to facilitate political contributions. However, there is nothing prohibiting the disclosure of whether employee contributions are made and in what amounts.

Delinquent Sewer Account Information Deemed Public Records

Numerous trial courts and the OOR have ruled that records relating to customers with delinquent sewer accounts are not exempted from disclosure. In ***Borough of Lemoyne v. Pennsylvania Office of Open Records,*** No. 13-6395 (Cumberland C.C.P. May 16, 2014), the court ruled that although the agency was subject to the FCEUA and could not harass its customers in connection with the collection of delinquent accounts, the release of the records is merely a response to a RTKL request and not a debt collection action. It further held that the FCEUA is "not intended to provide blanket protections to debtors but, rather, is intended to protect them from oppression by the creditor" and that responding to a RTKL request is not oppression or harassment of a debtor. ***See also Lower Paxton Tp. Authority/Lower Paxton Tp. v. Pennsylvania Office of Open Records,*** No. 2014-CV-4608 (Dauphin C.C.P. June 11, 2014); ***In re Appeal of City of Sharon Sanitary Authority,*** No. 2009-3539 (Mercer C.C.P. Jan. 26, 2010); ***Municipal Authority of Borough of Monroeville v. Lower Makefield Twp.,*** No. AP 2017-1131.

What Constitutes a "Similar Governmental Entity"

A regional alliance of businesses, industry, and tourism was not a local agency under the RTKL because there was no evidence of government control, the primary functions – economic development and community stewardship – were not a core purpose of a government agency, and its receipt of funds from government agencies was not enough to transform it into a local agency. ***In re Right to Know Law Request Served on Venango County's Tourism Promotion Agency and Lead Economic Development Agency,*** 83 A.3d 1101 (Pa.Cmwlth. 2014).

The question of whether a volunteer fire company is subject to the RTKL will depend on a "meaningful review of the relationship" between the agency and the fire company. Among the important factors to evaluate were the degree of governmental control, the nature of the fire company's functions, and the financial control by the township over the fire company. ***Pysher v. Clinton Twp. Volunteer Fire Co.,*** 209 A.3d 1116 (Pa.Cmwlth. 2019). Numerous county courts of common pleas have previously held that volunteer fire companies are not subject to the RTKL.

Yet, the OOR has generally found volunteer fire companies to be subject to the law. For example, in ***Houser v. Bangor Rescue Fire Co. No. 1,*** OOR Dkt. No. 2012-0319, the OOR determined that the General Assembly intended that the term "similar governmental entity" include volunteer fire companies. The OOR relied on decisions in which courts have held that volunteer fire companies are sufficiently governmental to qualify for immunity under the Political Subdivision Tort Claims Act and be considered governmental agencies under the Judicial Code. It also found that they "exist to perform a governmental function on behalf of local government units." ***See also Leydig v. Phoenix Vol. Fire Co.,*** OOR Dkt. AP 2016-0612.

The OOR generally looks at the following factors when determining whether an entity is a local agency subject to the RTKL: 1) was the entity created by a political subdivision pursuant to a specific statutory power; 2) is the entity not

a division of a political subdivision or a political subdivision itself; 3) does the entity have members appointed exclusively by the governing body of a political subdivision; 4) does the entity require a delegation of authority from a political subdivision; and 5) can the entity be disbanded by a political subdivision. ***Philadelphia Industrial Dev. Corp. v. Ali,*** No. 528 C.D. 2010, 2011 WL 10843527 (Pa.Cmwlth. April 18, 2011); ***McGrogan v. Carnegie Community Dev. Corp.,*** OOR Dkt. AP 2016-1022.

Section 305 – Presumption
Section 305(a) – Generally

Records of agencies are presumed to be public and are subject to mandatory disclosure. The RTKL is "remedial information designed to promote access to official government information." ***Levy v. Senate of Pennsylvania,*** 65 A.3d 361 (Pa. 2013).

Section 305(a)(3) – Exemption by Statutes, Regulations, and Court Orders

The federal Copyright Act does not exempt copyrighted materials from disclosure under the RTKL. However, copyrighted material may not be duplicated without the copyright holder's consent.

In ***Ali v. Philadelphia City Planning Com'n,*** 125 A.3d 92 (Pa.Cmwlth. 2015), the court held that "[i]n order to constitute an exemption under Section 305(a)(3) of the RTKL, the federal statute must expressly provide that the record sought is confidential, private and/or not subject to disclosure." In this instance, the Copyright Act "neither expressly makes copyrighted material private or confidential, nor does it expressly preclude a government agency, lawfully in possession of the copyrighted material, from disclosing that material to the public."

It is up to agencies to determine what efforts, if any, they will make to seek consent from copyright holders. When an agency limits access to inspection only, "the absence of consent by the copyright owner to duplication" should be presumed.

The Internal Revenue Code prohibits disclosure of tax "returns" or "return information" such as W-2 and 1099 forms, even in redacted form. ***Office of Budget v. Campbell,*** 25 A.3d 1318 (Pa.Cmwlth. 2011); ***Fort Cherry School Dist. v. Coppola,*** 37 A.3d 1259 (Pa.Cmwlth. 2012).

In ***Advancement Project v. Pennsylvania Dept. of Transp.,*** 60 A.3d 891 (Pa.Cmwlth. 2013), the Commonwealth Court rejected a RTKL request for the name, address, date of birth, and Social Security number of each person issued a driver's license or non-driver photo identification card. Because the information was contained on driver's licenses, the court held that it was a type of driving record and exempt from disclosure under Section 6114 of the Vehicle Code. As for non-driver identification cards, the court found that the same analysis applied because those cards inform that the holder is not authorized to drive.

In ***Pennsylvania Turnpike Com'n v. Murphy,*** 25 A.3d 1294 (Pa.Cmwlth. 2011), the court held that Section 8117(d) of the Transportation Act exempts records such as EZ Pass account information and vehicle movement records.

In ***City of Allentown v. Brenan,*** 52 A.3d 451 (Pa.Cmwlth. 2012), the court held that public records exclude those that are specifically exempted from disclosure pursuant to court order.

An appellate court was unable to determine whether images in school bus surveillance footage qualified as personally identifiable information under the Federal Educational Rights and Privacy Act so issue could not be decided on appeal. In addition, the school district did not establish that it would be unable to redact video. The court directed the school district to disclose the footage after making appropriate redactions.

It is up to agencies to determine what efforts, if any, they will make to seek consent from copyright holders.

It is also the open records officer's duty to inquire of any public officials as to whether they have records that could be deemed public.

Central Dauphin Sch. Dist. v. Hawkins, 286 A.3d 726 (Pa.Cmwlth. 2022).

Section 306 – Nature of Documents

The RTKL's disclosure requirements supersede the discovery restrictions contained in a private contractual agreement. As a result, private agreements cannot be used to shield documents from disclosure. ***Mid Valley Sch. Dist. v. Warshawer,*** No. 13-CV-1528, 2013 WL 10256082 (Lackawanna C.C.P. Sept. 17, 2013).

Section 502 – Open Records Officer

When an open records officer receives a request, it is his or her "duty and responsibility to determine whether the record is public, whether the record is subject to disclosure, or whether the public record is exempt from disclosure." It is also the open records officer's duty to inquire of any public officials as to whether they have records that could be deemed public. ***In re Silberstein,*** 11 A.3d 629 (Pa.Cmwlth. 2011). The requirement to inquire of public officials extends also to public employees, ***Yakim v. Municipality of Monroeville,*** OOR Dkt. AP 2016-0840, and other agencies, ***Joseph v. Office of Open Records,*** OOR Dkt. AP 2016-1184.

A good-faith response requires a good-faith search, followed by collection and review of responsive records, so that the agency has actual knowledge about the contents. It is not enough for the open records officer to rely on the representations of others without inquiring as to what investigation was made and without reviewing the records upon which the individual responding to the request relied. ***Uniontown Newspapers, Inc. v. Pennsylvania Dept. of Corrections,*** 243 A.3d 19 (Pa. 2020).

Section 506 – Requests
Section 506(a) – Disruptive Requests

Two duplicative requests did not rise to the level of an unreasonable burden on the agency. In addition, repetitive requests will not automatically be deemed unreasonably burdensome. ***Office of Governor v. Bari,*** 20 A.3d 634 (Pa. Cmwlth. 2011); see also ***Borough of West Easton v. Mezzacappa,*** 74 A.3d 417 (Pa.Cmwlth. 2013) (rejecting agency's argument that a request for approximately 50 documents was disruptive because the requester had made previous requests and the agency had a small staff).

Section 506(c) – Agency Discretion

The heads of agencies have the discretion to release records exempt from disclosure under the RTKL if they decide "that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access." ***Noonan v. Kane,*** 504 F.Supp.3d 387 (E.D.Pa. 2020).

Section 506(d) – Records in Possession of Former Agency Employees and Officials

Agencies do not need to ask whether their former employees and officials possess agency records. ***Breslin v. Dickinson Twp.,*** 68 A.3d 49 (Pa.Cmwlth. 2013).

Section 506(d) – Records in Possession of Third Parties

Disclosure of Records Turns on Whether Third Party Performs a Governmental Function and Records Directly Relate to That Function

A private entity's records are public when an agency hires it to perform a governmental function and the records sought directly relate to the performance of that function. In ***SWB Yankees LLC v. Wintermantel,*** 45 A.3d 1029 (Pa. 2012).

In this case, a reporter requested copies of all bids for a contract to manage concessions for a baseball team owned by a municipal authority. Pursuant to that contract, SWB Yankees LLC became the municipal authority's agent and the exclusive manager of all operations.

The municipal authority denied the request, stating that it did not possess the records and that because SWB was not performing a governmental function on its behalf, the records were not public records. The OOR directed the municipal authority to provide the information, and the trial court and Commonwealth Court affirmed.

SWB argued that the management of the stadium and franchise was not a governmental function. SWB and several supporting parties claimed that affirmation of the lower courts' rulings would place a chilling effect on private entities' willingness to contract with governmental entities.

The Supreme Court held that disclosure of the bids is required under Section 506(d)(1). The court found the term "governmental function" to be materially ambiguous but that a "reasonably broad construction best comports with the objective of the RTKL, which is to empower citizens by affording them access to information."

The court further concluded that the controlling factor should be whether there has been "delegation of some non-ancillary undertaking of government." It also held that the premise that the "government-always-acts-as-government," used by the Commonwealth Court in ***East Stroudsburg Univ. Foundation v. Office of Open Records,*** 995 A.2d 496 (Pa.Cmwlth. 2010), is too broad for purposes of Section 506 and that the General Assembly intended to narrow the category of records subject to disclosure by third parties.

Finally, the court held that it had "no difficulty holding that, where a government agency's primary activities are defined by statute as 'essential governmental functions,' and such entity delegates one of those main functions to a private entity via the conferral of agency status," non-exempted records relating to that function must be disclosed.

Miscellaneous Governmental Function Decisions

Independent auditors do not perform "governmental functions" when they conduct statutorily required audits and are thus not subject to the RTKL, a trial court judge ruled in ***Brian T. Kelly and Associates v. Northeastern Educ. Intermediate Unit,*** No. 13-CV-4921 (Lackawanna C.C.P. Feb. 12, 2014).

The court held that an accountant performing an independent audit of a governmental agency is "not subject to that agency's control or direction, and the auditor alone determines how the audit will be performed and what conclusions will be reached," thereby distinguishing this case from others, as in Wintermantel. It also examined the legislative history of the RTKL and noted that a proposed amendment that would arguably have applied to subject auditors to the RTKL was withdrawn after floor debate. As a result, the court held that "an accounting firm that completes an independent audit of a local agency does not 'perform a governmental function' on behalf of that agency for purposes" of the RTKL.

A university foundation was found to be engaging in a governmental function by fundraising and managing donations on the university's behalf pursuant to an agreement, thereby rendering its records directly related to those activities public records of the university. ***California Univ. of Pennsylvania v. Bradshaw,*** 210 A.3d 1134 (Pa.Cmwlth. 2019).

Independent auditors do not perform "governmental functions" when they conduct statutorily required audits and are thus not subject to the RTKL.

In ***Allegheny County Dept. of Administrative Services v. Parsons,*** 61 A.3d 336 (Pa.Cmwlth. 2013), the court applied the Wintermantel test and rejected an effort by a requester to obtain the names and dates of birth of employees of a third-party contractor performing social services on behalf of an agency because they were not directly related to the third party's performance of the services. The court distinguished its decision in ***Edinboro University of Pennsylvania v. Ford,*** 18 A.3d 1278 (Pa.Cmwlth. 2011), where it held that payroll records of a third party that contracted with the university were public records because they were required to comply with the Prevailing Wage Act.

Tax records held by an elected tax collector were not records or public records of the township because it had not contracted with the tax collector to perform a governmental function on its behalf. ***Honaman v. Township of Lower Merion,*** 13 A.3d 1014 (Pa.Cmwlth. 2011). However, if the tax collector submits records to the township, such as routine monthly reports, those become records of the township and must be disclosed upon request. ***Signature Info. Solutions, LLC v. West Whiteland Twp.,*** OOR Dkt. AP 2016-0778.

A third party was not required to provide records relating to its costs for items that it sold to prison inmates at agreed-upon prices. ***Buehl v. Office of Open Records,*** 6 A.3d 27 (Pa. Cmwlth. 2010).

A third party was not required to provide records between it and independent contractors who did not perform services for the agency. ***Giurintano v. Department of Gen. Servs.,*** 20 A.3d 613 (Pa.Cmwlth. 2011).

Requesters must address requests to open records officers to maintain appeal rights.

Section 507 – Retention of Records

In ***PG Pub. Co., Inc. v. Governor's Office of Admin.,*** 120 A.3d 456 (Pa.Cmwlth. 2015), the Commonwealth Court rejected an argument that the state's document retention policy violated the public's rights under the RTKL because it permitted employees to delete emails that could be the subject of litigation. It also confirmed that Section 507 does not impact record retention policies.

Section 701 – Access

In ***Scott v. SEPTA,*** No. 1600, July Term 2011 (Phila.C.C.P. Aug. 3, 2012), the court addressed what is meant by a document's "original format" and ruled that an agency needed to provide the metadata for electronic records when requested.

The requester sought emails, but in their "original format." SEPTA provided them in PDF format. The trial court found that the metadata encoded in computer files is an "indelible part of a 'public record' contained in a computer file" and an agency violates the RTKL when it converts records in order to strip them of the metadata. In doing so, the court rejected SEPTA's argument that it had complied with Section 701, which requires that records be provided in the "medium requested" and that the records were produced electronically.

Section 703 – Written Requests

Requests Must Be Addressed to Agency Open Records Officers to Trigger Appeal Rights

Requesters must address requests to open records officers to maintain appeal rights. ***Commonwealth, Pa. Gaming Control Bd. v. Office of Open Records,*** 103 A.3d 1276 (Pa. 2014).

In this case, a requester sent an email requesting certain documents to an employee in the communications and legislative office of the Gaming Control Board (GCB); that employee

was not the agency's open records officer. The employee neither responded to the request nor forwarded the email to the agency's open records officer. The requester appealed to the OOR, which rejected the GCB's argument that there was no valid RTKL request and ordered the release of the documents. The Commonwealth Court affirmed the OOR's decision that the request was valid but remanded for a review of whether the requested documents should be produced.

The Supreme Court agreed. It found that Section 703 "reveals an intention that citizens seeking the protections of the RTKL have to indicate their intention in this regard and place the respective agency on notice of that intention by addressing their requests, at least generally," to the agency's open records officer to trigger the provisions concerning the five-day timeframe to respond, deemed denials, and review by the OOR. Further, the "General Assembly plainly intended the words 'must be addressed to the open-records officer' to place the onus on the requester in addressing his or her own request."

The Supreme Court gave additional guidance regarding what would constitute compliance: "the requester is required to include *(or otherwise make)* at least some positive indication that the intended recipient of the written request is the agency's open-records officer, whether that officer be identified by name or by title, whether the requester sends his request to the open-records officer's specific email address or fax number, or whether the requester actually places his request directly in the hands of the open-records officer."

Test Applicable to Specificity Challenges

In ***Pennsylvania Dept. of Educ. v. Pittsburgh Post-Gazette,*** 119 A.3d 1121 (Pa.Cmwlth. 2015), the court held that the following three-part balancing test will be used when considering challenges to the specificity of a request: 1) the subject matter of the request; 2) the scope of the documents sought; and 3) the timeframe for which the records are sought.

The court noted that it previously applied the test in ***Carey v. Pennsylvania Dept. of Corrections,*** 61 A.3d 367 (Pa.Cmwlth. 2013) but had not explicitly laid out the test or explained how it should be applied. The court then gave additional guidance.

The court found that the request satisfied the second and third prongs but failed the first because it did not specify the subject matter of the request and the timeframe was not short enough to counterbalance its breadth.

First, the request must relate to a "transaction or activity" of the agency.

Second, the request must identify "a discrete group of documents, either by type…or by recipient." A request for a broad category of documents, such as all records, may be sufficiently specific if it is confined to a recipient.

Third, the request should identify a finite time period for which records are sought. This prong, the court acknowledged, is "the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope."

In this case, the request sought all records of the then-acting Secretary of Education for a period of 347 days. The court found that the request satisfied the second and third prongs but failed the first because it did not specify the subject matter of the request and the timeframe was not short enough to counterbalance its breadth.

"In determining whether a request is sufficiently specific, an agency should rely on the common meaning of words and phrases, be mindful of the remedial purpose of the RTKL, and construe the specificity of the request in the context of the request, rather than envisioning everything

the request might conceivably encompass." ***Pennsylvania State Police v. Office of Open Records,*** 995 A.2d 515 (Pa.Cmwlth. 2010).

Broad "Word Search" Requests Are Not Sufficiently Specific

In ***Montgomery County v. Iverson,*** 50 A.3d 281 (Pa.Cmwlth. 2012), the court ruled that a "word search" request was too broad to enable the agency to determine what was sought.

The request sought emails that included any of 14 different search terms. Montgomery County denied the request because the requester did not identify a time period, senders or recipients, or the subject matter. The county also argued that complying with the request would be impracticable because it would have to purchase expensive equipment and invest substantial time to review emails.

The OOR held that the request was sufficiently specific and that the county's difficulty in producing the records did not alter their character as public records. The trial court reversed.

The Commonwealth Court affirmed the trial court, finding that the request provided no timeframe, did not identify specific individuals or email addresses, and provided "no context within which the search may be narrowed." It also found that many of the search terms were so incredibly broad that it would be difficult for the agency to reasonably respond.

Identification of Specific Types of Documents

In ***Commonwealth, Dept. of Environmental Protection v. Legere,*** 50 A.3d 260 (Pa.Cmwlth. 2012), the court held that DEP should have complied with a request that sought all determination letters and orders it issued under a specific section of the Oil and Gas Act.

DEP provided access to some of the requested records but claimed that the request was not specific and that its files were not maintained in a manner that would allow it to look for all the records.

The court rejected DEP's specificity argument because the request sought a specific type of document: DEP determination letters and orders. In addition, that the request sought "all" documents for a period of four years did not permit DEP to avoid providing them.

Agencies Not Required to Perform Legal Research

In ***Askew v. Pennsylvania Office of Governor,*** 65 A.3d 989 (Pa.Cmwlth. 2013), the court confirmed that requests that require the performance of traditional legal research and analysis to form the basis of a legal opinion are not sufficiently specific.

The requester sought legislative bills on a specific issue and argued that research is involved with fulfilling every request, so the fact that research may be needed should not be determinative. The court rejected that argument, finding that "a request that explicitly or implicitly obliges legal research is not a request for a specific document" but instead is a request for legal research with the hope that the research will locate a specific document that fits the description of the request.

Timeframes

In ***Easton Area School Dist. v. Baxter,*** 35 A.3d 1259 (Pa.Cmwlth. 2012), the court found that a request was sufficiently specific even though it requested all emails sent and received by specific email addresses over a period of 30 days because the "request here was not for years …[and] obviously sufficiently specific because the [agency] has already identified potential records included within the request."

In ***Askew,*** 65 A.3d 989 (Pa.Cmwlth. 2013), the court confirmed that a request must have a timeframe and identify the types of documents requested to be sufficiently specific under Section 703.

Records that do not exist at the time of a RTKL request need not be provided because requesters may not expand or modify their requests on appeal. This would include appendices or exhibits that are added to a record after it

is first requested. ***McKelvey v. Office of Attorney General,*** 172 A.3d 122 (Pa.Cmwlth. 2017).

Section 705 – Creation of Record

Drawing information from a database does not constitute the creation of a record because a "record" includes information "regardless of form." However, agencies must only provide the information in the format in which it is available. ***Commonwealth, Dept. of Environmental Protection v. Cole,*** 52 A.3d 541 (Pa.Cmwlth. 2012); ***Feldman v. Pennsylvania Commission on Crime and Delinquency,*** 208 A.3d 167 (Pa. Cmwlth. 2019).

In ***Commonwealth, Dept. of Environmental Protection v. Legere,*** 50 A.3d 260 (Pa.Cmwlth. 2012), the court rejected DEP's argument that a request violated Section 705 because it would require DEP to compile and organize documents in a manner it would not ordinarily use. The court held that "it cannot be inferred from Section 705 of the RTKL that the General Assembly intended to permit an agency to avoid disclosing existing public records by claiming, in the absence of a detailed search, that it does not know where the documents are…."

In ***Pennsylvania State Police v. McGill,*** 83 A.3d 476 (Pa.Cmwlth. 2014), the Commonwealth Court ruled that the Pennsylvania State Police did not need to comply with a request for the names of all accredited police officers because doing so would have required the PSP to create a record.

The PSP argued that it had a list of all officers but was not able to determine which ones were engaged in undercover or covert work with their respective departments and thus entitled to have their names redacted pursuant to Section 708(b)(6)(iii). The requester argued that the PSP had to provide the names, even if doing so meant that the PSP had to contact every police department in the commonwealth to determine which names should be redacted.

The court found that to "obtain the information necessary to comply with the request and ensure that confidential information is not disclosed, the PSP cannot simply examine and compile information already in its possession." As a result, the PSP could not comply with the request without having to create a record.

Drawing information from a database does not constitute the creation of a record because a "record" includes information "regardless of form."

Section 706 – Redaction

In responding to a RTKL request, the agency may not delegate its disclosure duties or defer to the redactions of third parties. The agency has the responsibility to "independently evaluate and discern the validity of claimed exemptions to disclosure in the first place, including those made by third parties." ***McKelvey v. Pa. Dept. of Health,*** 255 A.3d 385 (Pa. 2021).

In ***Pennsylvania State Troopers Ass'n v. Scolforo,*** 18 A.3d 435 (Pa.Cmwlth. 2011), the requester sought documents relating to requests made by members of the PSP to engage in outside employment and the agency's response to those requests. The agency argued that some of the requests were exempt because they reflected pre-decisional deliberations and non-criminal investigations and could present personal security issues.

The court ruled that the agency must produce the records in redacted form because they were public records that were not subject to exemption and did not pose a security risk if disclosed.

If there are requests for electronic records and the agency provides evidence that it cannot ensure that electronic redaction is secure, then it is not required to provide the records in electronic format. ***Haderer v. Pennsylvania Dep't of Transp.,*** OOR Dkt. AP 2014-0878. Conversely, if the agency cannot provide evidence

Addresses listed in property tax assessment records are public under statute and case law and are not protected by a constitutional right of privacy.

that redaction would not be secure, then it must provide the electronic records. ***Renshaw v. City of Allentown,*** OOR Dkt. AP 2009-1013.

Agencies cannot claim "non-responsiveness" to a request as a legal basis to redact a public record that the agency has decided to disclose. ***Haverstick v. Pa. State Police,*** 273 A.3d 593 (Pa. Cmwlth. 2022).

Section 708 – Exceptions for Public Records

Section 708(b)(1) – Personal Security

"More than mere conjecture is needed" to satisfy the personal security exemption, which provides that a record may be exempt if its disclosure will be "reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual." ***Lutz v. City of Philadelphia,*** 6 A.3d 669 (Pa. Cmwlth. 2010); ***Delaware County v. Schaefer ex rel. Philadelphia Inquirer,*** 45 A.3d 1149 (Pa. Cmwlth. 2012); ***California Borough v. Rothey,*** 185 A.3d 456 (Pa.Cmwlth. 2018) (rejecting application of personal security exemption to a video showing a physical altercation between a police officer and a detainee in a holding cell because it was "unclear how a prisoner secured in the holding cell could access the blind spots in the cell and commit an act that could endanger safety or security.").

The Supreme Court ruled in ***Pennsylvania State Educ. Ass'n v. Department of Community and Economic Development,*** 148 A.3d 142 (Pa. 2016), that there is a constitutionally protected right of privacy in one's home address information, but that a balancing test must be employed to determine whether home address information should be provided in response to a RTKL request. The agency must balance the individual's right to privacy against the public interest in disclosure.

The balancing test must be performed in all instances involving government disclosure of personal information, including those not mandated by the RTKL or another statute. ***Reese v. Pennsylvanians for Union Reform,*** 173 A.3d 1143 (Pa. 2017). "Because of the lack of meaningful procedural due process protections afforded to those whose private information is sought through the RTKL, the obligation to protect against the disclosure of personal information "must fall on the agencies that hold this information and have the wherewithal, in the context of the RTKL, to protect it from disclosure." ***Department of Human Services v. Pennsylvanians for Union Reform,*** 154 A.3d 431 (Pa.Cmwlth. 2017).

Addresses listed in property tax assessment records are public under statute and case law and are not protected by a constitutional right of privacy. ***Butler Area School Dist. v. Pennsylvanians for Union Reform,*** 172 A.3d 1173 (Pa. Cmwlth. 2017).

The home address exemption extends to individuals or beneficiaries living at the same address as law enforcement officers and judges. ***State Employees' Retirement Sys. v. Fultz,*** 107 A.3d 860 (Pa.Cmwlth. 2015).

School bus surveillance videos are not considered to be "education records" so their disclosure would not result in the loss of federal funding. ***Easton Area School Dist. v. Miller,*** 191 A.3d 75 (Pa.Cmwlth. 2018).

Section 708(b)(2) – Public Safety

Agencies must establish two elements to successfully assert the public safety exception: 1) the record relates to a law enforcement or public safety activity, and 2) disclosure of the record would be "reasonably likely" to threaten public safety or a public protection activity. ***Adams v. Pennsylvania State Police,*** 51 A.3d 322 (Pa.Cmwlth. 2012). The "reasonably likely" element must be established by more than speculation that the disclosure would cause harm. ***Carey v. Pennsylvania Dept. of Corrections,*** 61 A.3d 367 (Pa.Cmwlth. 2013). In holding that records of the agency's camera system were exempt, the court noted that the exemption does not require "absolute certainty that if redacted portions were to be disclosed, there would be a breach of public safety.…" ***Allegheny County District Attorney's Office v. Wereschagin,*** 257 A.3d 1280 (Pa.Cmwlth. 2021).

An agency was forced to produce footage taken from a surveillance camera in its building because the agency's affidavit was insufficient because it: 1) was silent on what was depicted in the footage; 2) failed to explain why the footage would jeopardize building security and physical safety; 3) needed to explain how the township uses the cameras to enhance public and building safety; and 4) did not state whether some portions of the record could be redacted. ***Grove v. Gregg Twp.,*** No. 1186 C.D. 2017, 2018 WL 3097074 (Pa.Cmwlth. June 25, 2018) (unpublished).

Section 708(b)(3) – Physical Security

In ***Bowling v. Office of Open Records,*** 990 A.2d 813 (Pa.Cmwlth. 2010), the court held that the agency did not show that it was necessary to protect security by making sweeping redactions. The court held that agencies must make a reasonable effort to differentiate between goods and services which are reasonably likely to endanger public safety and those that do not.

For this exemption to apply, "the act of disclosing the records, rather than the records themselves, must create a reasonable likelihood of endangerment to the safety or physical security of certain structures." ***Mission Pennsylvania, LLC v. McKelvey,*** 212 A.3d 119 (Pa.Cmwlth. 2019); ***see also Allegheny County District Attorney's Office v. Wereschagin,*** 257 A.3d 1280 (Pa. Cmwlth. 2021) (ruling that disclosure of records would create a reasonable likelihood of endangerment to an agency's camera network system).

Section 708(b)(6) – Personal Identification Information

The Supreme Court ruled in ***Pennsylvania State Educ. Ass'n v. Department of Community and Economic Development,*** 148 A.3d 142 (Pa. 2016), that there is a constitutionally protected right of privacy in one's home address information, but that a balancing test must be employed to determine whether home address information should be provided in response to a RTKL request. The agency must balance the individual's right to privacy against the public interest in disclosure.

In its decision, the Supreme Court expressly overruled the Commonwealth Court's decisions in ***Office of Lt. Governor v. Mohn,*** 67 A.3d 123 (Pa.Cmwlth. 2013), and ***Office of Governor v. Raffle,*** 65 A.3d 1105 (Pa.Cmwlth. 2013).

In ***Department of Public Welfare v. Clofine,*** No. 706 C.D. 2013, 2014 WL 688127 (Pa. Cmwlth. Feb. 20, 2014) (unpublished), the Commonwealth Court held that the direct phone numbers and email addresses of agency employees constitute "personal identification information" exempt from disclosure. The agency-issued email addresses and telephone numbers were "personal identification information" because they

The agency must balance the individual's right to privacy against the public interest in disclosure.

are "unique to a particular individual," "used to identify or isolate an individual from the general population," or information "which makes the individual distinguishable from another."

In ***Pennsylvania Social Services Union, Local 688 of Services Employees Intern. Union v. Commonwealth,*** 59 A.3d 1136 (Pa.Cmwlth. 2012), the court held that agencies may not release statements of financial interest to the public without redacting personal financial information. Therefore, although statements are public records, there may be content that must be redacted before making them available.

Birth dates are not automatically exempt under Section 708(b)(6)(i). Birth dates of "all other public employees in the Personal Identification Exception" are "not entitled to the unconditional protection afforded the home addresses and birth dates of certain vulnerable or at-risk individuals such as law enforcement officers, judges, and minor children." ***Delaware County v. Schaefer ex rel. Philadelphia Inquirer,*** 45 A.3d 1149 (Pa. Cmwlth. 2012); ***Governor's Office of Admin. v. Purcell,*** 35 A.3d 811 (Pa.Cmwlth. 2011); ***Allegheny County Dept. of Administrative Services v. Parsons,*** 61 A.3d 336 (Pa.Cmwlth. 2013).

In ***Pennsylvania State Police v. McGill,*** 83 A.3d 476 (Pa.Cmwlth. 2014), the Commonwealth Court rejected the State Police's argument that releasing the names of all municipal police officers in the state or the amount budgeted by public entities for public safety would constitute a safety risk. The court held that the only name of a public employee that cannot be released is that of any individual engaged in undercover or covert work.

The court held that "[w]e do not have 'classified' sections of state or municipal budgets to preclude the public from knowing the number of budgeted officers or the amount a particular community spends on public safety – citizens have a right to know how much their tax dollars are being allocated to public safety to determine if the amount is too much or too little."

Employees' counties of residence are protected from disclosure because that information is "not closely related to the official duties" of the employees and "does not provide insight into their official actions." ***Governor's Office of Admin. v. Campbell,*** 202 A.3d 890 (Pa.Cmwlth. 2019).

Disclosure of names of successful bidders at public auctions of forfeited items advances the accountability of the law enforcement authorities responsible for the civil forfeiture of property. ***Lancaster County District Attorney's Office v. Walker,*** 245 A.3d 1197 (Pa.Cmwlth. 2021).

Disclosure of the city and state information for donors to a city-created legal defense fund was sufficient to advance the public interest in identifying donors but protecting against potential harm to donors' reputations and personal security by prohibiting disclosure of specific home address information. ***City of Harrisburg v. Prince,*** 288 A.3d 559 (Pa.Cmwlth. 2023).

Section 708(b)(7) – Employee Records

Applications for an open position on the Commonwealth Court did not fall within Section 708(b)(7)'s exemption because the General Assembly distinguished between public officials and employees in the RTKL. ***Office of General Counsel v. Bumsted,*** 247 A.3d 71 (Pa. 2021).

There is no mandate for the public disclosure of records identifying employees subject to the initiation of the disciplinary process under the School Code or Section 708(b)(7(viii) of the RTKL. However, should the disciplinary process result in the demotion or discharge of employees, then records relating to that discipline will no longer be exempt. ***Highlands Sch. Dist. v. Rittmeyer,*** 243 A.3d 755 (Pa.Cmwlth. 2020).

The City of Philadelphia was not required to disclose a list of officers whose dismissals were pending a grievance arbitration process. Because there is no agency final decision until the arbitrator renders his or her decision, Section 708(b)(7)(viii) of the RTKL acts to protect that information from disclosure. In ***In re Melamed,*** 287 A.3d 491, (Pa.Cmwlth. 2022).

Employee performance reviews are exempt from disclosure. ***Commonwealth, Dept. of Labor and Industry v. Rudberg,*** 32 A.3d 877 (Pa. Cmwlth. 2011).

Grievance records are not protected from disclosure because the exemption applies to information about individual agency employees, not labor disputes. ***Johnson v. Pennsylvania Convention Ctr. Auth.,*** 49 A.3d 920 (Pa. Cmwlth. 2012).

Employment applications and resumes of individuals hired by an agency are subject to disclosure. ***American Civil Liberties Union of Pa. v. School Dist. of Lancaster,*** OOR Dkt. AP 2016-1202.

An employment termination letter that contains references to prior disciplinary actions could not be disclosed in its entirety because it was not part of a "final action" of the agency. In addition, the reasons for taking adverse action against the employee may be redacted. ***Silver v. Borough of Wilkinsburg,*** 58 A.3d 125 (Pa. Cmwlth. 2012).

A school bus video was not exempt because the school district failed to prove that the video was in the employee's personnel file and was information regarding the discipline, demotion or discharge of the employee. ***Easton Area School Dist. v. Miller,*** 201 A.3d 721 (Pa. Cmwlth. 2018).

Settlement agreements, even where they contain confidentiality provisions, are public records. ***Satullo v. Nazareth Area Sch. Dist.,*** OOR Dkt. AP 2014-1835.

Employment applications and resumes of individuals hired by an agency are subject to disclosure.

Section 708(b)(8) – Collective Bargaining Records

Arbitrators' awards are public records, but arbitrators' opinions are not. ***Yakim v. Municipality of Monroeville,*** OOR Dkt. AP 2016-1890.

Section 708(b)(9) – Draft Records

Resolutions presented for consideration at a public meeting are not drafts eligible for exemption. Once an agency puts the draft resolutions on the agenda for the public meeting, the resolutions cross the threshold from being drafts that were prepared internally to public records under consideration at a public meeting. ***Philadelphia Public School Notebook v. School Dist. of Philadelphia,*** 49 A.3d 445 (Pa.Cmwlth. 2012).

Section 708(b)(10) – Predecisional Deliberations

The substance of the information, not its form, which determines whether disclosure should be made. ***Office of Governor v. Scolforo,*** 65 A.3d 1095 (Pa.Cmwlth. 2013) (requiring the Governor's Office to provide emails and requested calendars without redaction and stating that the predecisional deliberative exception codifies the deliberative process privilege). As such, the exemption is not limited to the specifically identified examples listed in Section 708(b)(10). ***Office of General Counsel v. Bumsted,*** 247 A.3d 71 (Pa. 2021) (rejecting argument that applications for appointment to Commonwealth Court should be protected from disclosure).

The RTKL does not confer on third parties the same standing to appeal RTKL decisions that it does requesters and agencies.

"Purely factual material" generally cannot be withheld under this exception, as long as the material can be severed from the rest of the record and the disclosure would not be "tantamount to the publication of the [agency's] evaluation and analysis." ***McGowan v. Pennsylvania Dep't of Envtl. Protection,*** 103 A.3d 374 (Pa.Cmwlth. 2014). This would include communications that are purely logistical in nature, ***Haverstick v. Pa. Office of Attorney General,*** 273 A.3d 600 (Pa.Cmwlth. 2022), as well as preliminary and final score sheets, ***Payne v. Pennsylvania Dept. of Health,*** 240 A.3d 221 (Pa.Cmwlth. 2020).

Communication does not necessarily need to be internal to a single agency to be covered by Section 708(b)(10). Advice from agency staff to the board of commissioners could still be an internal, predecisional communication or deliberations between the agency and employees of another agency. ***Kaplin v. Lower Merion Twp.,*** 19 A.3d 1209 (Pa.Cmwlth. 2011).

However, once a record is shared with an agency's third-party consultants, the predecisional deliberation exemption does not apply because those communication are no longer "internal" to the agency. ***Chester Water Authority v. Pennsylvania Dept. of Community & Economic Development,*** 249 A.3d 1106 (Pa. 2021).

Section 708(b)(11) – Trade Secrets and Confidential Proprietary Information

To successfully assert this exception, agencies must present enough evidence that records are maintained in a confidential manner. ***Giurintano v. Department of Gen. Servs.,*** 20 A.3d 613 (Pa. Cmwlth. 2011).

The OOR "should take all necessary precautions, such as conducting a hearing or performing in camera review, before providing access to information which is claimed to reveal 'confidential proprietary information.'" ***Office of Governor v. Bari,*** 20 A.3d 634 (Pa.Cmwlth. 2011).

This exception does not apply to financial records. ***Smart Communications Holding, Inc. v. Wishnefsky,*** 240 A.3d 1014 (Pa.Cmwlth. 2020); ***Commonwealth v. Eiseman,*** 125 A.3d 19 (Pa. 2015).

The RTKL does not confer on third parties the same standing to appeal RTKL decisions that it does requesters and agencies, but third parties have an independent basis to preserve property interests in their trade secrets or confidential trade secret information.

In ***West Chester University v. Schackner,*** 124 A.3d 382 (Pa.Cmwlth. 2015), a newspaper reporter requested records relating to West Chester University's proposed separation from the State System of Higher Education. Those records included documents relating to the efforts of a lobbying firm that the university retained to assist it in its efforts to promote a legislative bill that would allow for the separation.

The lobbying firm appealed the OOR's final determination ordering the disclosure of the contract for lobbying services between it and the university's foundation. It argued that the records contained confidential, proprietary information under Section 708(b)(11) of the RTKL and that disclosure would damage its competitive position.

The Commonwealth Court held that the lobbying firm "has an independent basis under due process, outside the provisions of the RTKL, to preserve its property interest in protecting the disclosure of its trade secrets or

confidential proprietary information" because the scope of review of the courts is "plenary as to facts and/or the right to appeal preserved in the Pennsylvania Constitution." However, "that right is limited to the independent basis for appeal relating to those direct identifiable property interests." In other words, third parties may only appeal to the extent that they are protecting trade secrets or other confidential and proprietary information contained in public records.

Section 708(b)(12) – Notes and Working Papers

The schedules and calendars of agency officials are exempt from disclosure when they are created solely for the individuals' convenience and are not shared elsewhere within the agency. To determine whether a record is for individuals' "own personal use," the documents must be used by the individuals to carry out public responsibilities personal to them. ***City of Philadelphia v. Philadelphia Inquirer,*** 52 A.3d 456 (Pa.Cmwlth. 2012).

Section 708(b)(13) – Records Identifying Donors

Records relating to individuals who volunteer services or provide temporary use of their property to agencies without compensation are exempt because those services constitute a "donation" and Section 708(b)(13) does not limit exemptions from disclosure to large donations or permanent gifts of money or property. ***Municipality of Mt. Lebanon v. Gillen,*** 151 A.3d 722 (Pa.Cmwlth. 2016).

Records requested about a corporation's donations are not exempt from access because Section 708(b)((13) applies only to "individuals." ***California Univ. of Pa. v. Bradshaw,*** 210 A.3d 1134 (Pa.Cmwlth. 2019).

Recordings relating to the actual receipt and disbursement of privately donated nongovernmental funds by an agency into and from an agency account are "financial records." ***City of Harrisburg v. Prince,*** 186 A.3d 544 (Pa. Cmwlth. 2018).

Section 708(b)(16) – Criminal Investigations

After the Pennsylvania Supreme Court ruled in ***Pennsylvania State Police v. Grove,*** 161 A.3d 877 (Pa. 2017), that motor vehicle recordings in police vehicles are generally subject to disclosure under the RTKL *(unless specific exceptions apply to various portions of the recordings)*, the General Assembly enacted Act 44 of 2017, which lays out the new procedure for addressing requests for motor vehicle recordings.

The exemption applied to a video showing a physical altercation between a police officer and a detainee in a holding cell because the police chief viewed the video, took it to the district attorney for review, fired the police officer, and filed criminal charges against him. ***California Borough v. Rothey,*** 185 A.3d 456 (Pa.Cmwlth. 2018).

Evidence regarding the "real and apparent dangers" is enough to justify the application of the exception, but the record must make clear which portions of video footage trigger those concerns. ***Borough of Pottstown v. Suber-Aponte,*** 202 A.3d 173 (Pa.Cmwlth. 2019).

The entire incident report, "no matter what is contained" therein, falls within the exemption. ***Hunsicker v. Pennsylvania State Police,*** 93 A.3d 911 (Pa.Cmwlth. 2014).

Evidence regarding the "real and apparent dangers" is enough to justify the application of the exception, but the record must make clear which portions of video footage trigger those concerns.

The requester's status as a relative is irrelevant because a "record is either available to the public at large as a public record or it is shielded from disclosure." ***Cafoncelli v. Pennsylvania State Police,*** No. 1392 C.D. 2016, 2017 WL 2415205 (Pa.Cmwlth. June 5, 2017).

Records detailing the execution of a search warrant are related to criminal investigations and exempt. ***Mitchell v. Office of Open Records,*** 997 A.2d 1262 (Pa.Cmwlth. 2010).

Witness statements are exempt from disclosure under Section 9106(c)(4) of the Criminal History Record Information Act. However, immunity agreements are not per se investigative materials. ***Coley v. Philadelphia Dist. Attorney's Office,*** 77 A.3d 694 (Pa.Cmwlth. 2013).

Arrest photographs, unless filed of record with a member of the unified judicial system, are exempt. ***Duffner v. Pennsylvania State Police,*** OOR Dkt. AP 2009-0130.

Section 708(b)(17) – Non-Criminal Investigations

The term "investigation" in Section 708(b)(17) means a "systematic or searching inquiry, a detailed examination, or an official probe…" ***Department of Health v. Office of Open Records,*** 4 A.3d 803 (Pa.Cmwlth. 2010).

The exception applies even after the investigation has been completed. ***Mahl v. Springfield Tp.,*** No. 853 C.D. 2011, 2012 WL 8681566 (Pa.Cmwlth. Jan. 11, 2012) (unpublished).

The exception may also apply to records that are created before an investigation has commenced. The exempt status of records is "not solely determined by the fact that they are created before an investigation" and reviewed only after an incident, claim or accident is reported thereby triggering an investigation. ***Port Authority of Allegheny County v. Towne,*** 174 A.3d 1167 (Pa.Cmwlth. 2017).

Names of individuals who report zoning violations are exempted. ***Stein v. Plymouth Tp.,*** 994 A.2d 1179 (Pa.Cmwlth. 2010).

A police department's records related to a welfare check are exempt under the noncriminal investigation exemption. ***In re Johnson,*** 254 A.3d 796 (Pa.Cmwlth. 2021).

In ***Pennsylvania Public Utility Com'n v. Seder,*** 139 A.3d 165 (Pa. 2016), the court held that Section 335 of the Public Utility Code required disclosure of a tip letter and investigative file and goes "above and beyond that which is required by the RTKL." ***See also Department of Public Welfare v. Chawaga,*** 91 A.3d 257 (Pa. Cmwlth. 2014) (finding that an agency performance audit was subject to disclosure because it was not part of the agency's legislatively granted fact-finding and investigative powers).

In ***Lackawanna County Government Study Com'n v. Scranton Times, L.P.,*** No. 1938 C.D. 2014, 2015 WL 7357925 (Pa.Cmwlth. Nov. 20, 2015) (unpublished), the Commonwealth Court ruled that a government study commission could not withhold its investigator's written report because its official duties were confined to a study of the county's existing form of government compared to other possible forms and the entire basis of the commission was to produce a report for public consumption.

Section 708(b)(18) – Time Response Logs and 911 Calls

The term "time response logs" "must contain the time of the request for service, the address or cross-street information, and when the responder arrived at the scene." ***County of York v. Office of Open Records,*** 13 A.3d 594 (Pa. Cmwlth. 2011).

Section 708(b)(22) – Real Estate Appraisals, Environmental Reviews, and Audits

An agency's environmental reports were

exempt from disclosure because they were commissioned before the agency made the decision to proceed with the acquisition of the property. While the acquisition does not need to be finalized, "the parties must be past the point in time that the sales agreement cannot be voided without penalty to the buyer." ***Mountz v. Columbia Borough,*** 260 A.3d 1046 (Pa.Cmwlth. 2021).

Section 708(b)(26) – Bid Proposals

The selection of offerors for negotiations does not constitute an "award of the contract" for purposes of Section 708(b)(26). Thus, bid documents remain exempt until the contract is awarded. ***UnitedHealthcare of Pa., Inc. v. Pa. Dept. of Human Services,*** 187 A.3d 1046 (Pa. Cmwlth. 2019).

Section 708(b)(26) protects "financial information of a bidder or offeror." ***Global Tel*Link Corp. v. Wright,*** 147 A.3d 978 (Pa.Cmwlth. 2016).

Section 901 – General Rule

Section 901 requires that open records officers perform a reasonable search for records and do so in good faith. ***Department of Labor & Indus. v. Earley,*** 126 A.3d 355 (Pa.Cmwlth. 2015). The officer has a duty to advise all custodians of potentially responsive records about the request and to obtain all potentially responsive records from those in possession. ***Breslin v. Dickinson Twp.,*** 68 A.3d 49 (Pa.Cmwlth. 2014).

In ***Chambersburg Area School Dist. v. Dorsey,*** 97 A.3d 1281 (Pa.Cmwlth. 2014), the Commonwealth Court found that a trial court should not have quashed a requester's attempt to argue bad faith by an agency that produced thousands of pages of documents approximately two years after the RTKL requests were made when it was able to find and produce the documents in response to discovery requests in unrelated litigation.

This dispute began when the requester sought documents relating to an after-school program run by the school district. The district produced four documents but refused to disclose others,

Section 901 requires that open records officers perform a reasonable search for records and do so in good faith.

citing the attorney-client privilege. The requester appealed and then filed a second identical request to which the district did not respond. The requester also appealed the deemed denial of the second request.

The OOR ordered the district to disclose the records. On appeal, the trial court ordered an in camera review and concluded that all the documents were properly withheld.

The district later notified the requester that it had located almost 4,000 pages of additional documents when responding to a separate litigation matter. The requester then sought to supplement the record with evidence of the district's purported bad faith, which the trial court quashed.

The Commonwealth Court rejected the requester's argument that the district waived the attorney-client privilege by failing to produce a privilege log and that her due process rights were violated by the admission of the privileged documents into the record after the court conducted its in camera review. However, the found that the trial court abused its discretion by refusing to investigate the bad faith claim because there was no indication of why, with diligence, the district would not have been able to produce the documents.

In ***Commonwealth, Office of Governor v. Donahue,*** 98 A.3d 1223 (Pa. 2014), the Pennsylvania Supreme Court held that the deadline to respond to requests begins when the agency's open records officer receives the request, thereby rejecting the OOR's argument that the deadline begins when any agency employee receives the request.

The deadline to respond to requests begins when the agency's open records officer receives the request.

Deadline should be calculated based on the agency's actual business days, not the typical Monday-Friday schedule. ***Winters v. Warwick Twp.,*** OOR Dkt. AP 2011-0952.

Agencies must conduct an actual physical search of their files. In ***Commonwealth, Dept. of Environmental Protection v. Legere,*** 50 A.3d 260 (Pa.Cmwlth. 2012), the court noted that DEP did not conduct an actual physical search of its files and stated that there is "simply nothing in the RTKL that authorizes an agency to refuse to search for and produce documents based on the contention it would be too burdensome to do so."

Section 902 – Extensions of Time

Agencies must state the reasons for their need to invoke the 30-day extension provided for in Section 902. Two reasons are the necessity of the agency to conduct a legal review and the requester's refusal to pay fees. ***Commonwealth, Dept. of Transportation v. Drack,*** 42 A.3d 355 (Pa.Cmwlth. 2012).

It is possible that an agency may receive additional time after the extension period with which to respond to requests. The agency making a claim for additional time "has to provide the OOR with a valid estimate of the number of documents being requested, the length of time that people charged with reviewing the request require to conduct this review, and if the request involves documents in electronic format, the agency must explain any difficulties it faces when attempting to deliver the documents in that format. ***Pennsylvania State Sys. of Higher Educ. v. Association of State Coll. & Univ. Faculties,*** 142 A.3d 1023 (Pa.Cmwlth. 2016).

Section 903 – Denials

In ***Levy v. Senate of Pennsylvania,*** 65 A.3d 361 (Pa. 2013), the Supreme Court overturned the Commonwealth Court's decision in ***Signature Information Solutions, LLC v. Aston Tp.,*** 995 A.2d 510 (Pa.Cmwlth. 2010), and rejected a per se rule requiring waiver of reasons not included in initial denials of requests.

The Supreme Court held that a per se rule that agencies waive all reasons for denial not asserted in an initial denial is "unnecessarily restrictive." It found that permitting agencies to assert new reasons for denial at the appeals officer stage would not slow down the process because final determinations still must be made within 30 days of an appeal. The court's concern over the lack of due process afforded to those individuals whose private information may be disclosed because of an agency's failure to identify all reasons for non-disclosure in an initial denial also weighed heavily on its decision to reject the per se waiver rule.

On remand in ***Levy v. Senate of Pennsylvania,*** 94 A.3d 436 (Pa.Cmwlth. 2014), the Commonwealth Court stated that the Supreme Court was "careful not to totally reject waiver in RTKL proceedings" and held that "an agency must raise all its challenges before the fact finder closes the record." Generally, closing of the record will occur at the appeals officer stage, but in extraordinary cases where the initial reviewing court acts as the fact finder, agencies must raise all challenges before the close of evidence before the court. ***See also Fort Cherry School Dist. v. Coppola,*** 37 A.3d 1259 (Pa.Cmwlth. 2012).

An agency's failure to respond to a RTKL request does not waive its right to later raise exceptions. The reasoning of ***Levy*** "applies with as much force where an open records officer fails to list a reason for non-disclosure on the agency's initial written denial as when it fails to pro-

vide a written denial at all for non-disclosure." ***McClintock v. Coatesville Area School Dist.,*** 74 A.3d 378 (Pa.Cmwlth. 2013).

Denial letters must state the grounds for denial with a citation to the appropriate legal authority. Citations to the applicable exceptions under Section 708 are enough to put the requestor on notice of the grounds for denial. ***Saunders v. Pennsylvania Dept. of Corrections,*** 48 A.3d 540 (Pa.Cmwlth. 2012).

"Just because a request is for a large number of records does not mean that an agency is excused from its obligation to produce the requested records." To make a claim about lack of resources, the agency must provide the OOR with a valid estimate of the number of documents being requested, the length of time the review will require, and, if the request involves electronic records, any difficulties involved with retrieving documents in that format. ***Pennsylvania State Sys. of Higher Educ. v. Association of State College and University Faculties,*** 142 A.3d 1023 (Pa.Cmwlth. 2016).

In ***Commonwealth, Dept. of Environmental Protection v. Legere,*** 50 A.3d 260 (Pa.Cmwlth. 2012), the court held that DEP should have complied with a request that sought all determination letters and orders DEP issued under the Oil and Gas Act.

DEP provided access to some of the requested records but claimed that its files were not maintained in a manner that would allow it to look for all records.

The court rejected DEP's argument that it would be extremely burdensome to locate the records. Any burden on DEP resulted from its records tracking methods, not the request, and the "agency's failure to maintain the files in a way necessary to meet its obligations under the RTKL should not be held against the requester."

Section 904 – Certified Copies

A "certified copy" of a responsive record is "more than simply the agency's records officer's attestation that he or she has made a true and correct copy of a document in an agency's possession. Instead, it verifies the authenticity of the document for purposes of admitting the record as evidence during pending or future litigation." ***Philadelphia Dist. Atty's Office v. Cwiek,*** 169 A.3d 711 (Pa.Cmwlth. 2017); ***Butler v. Dauphin Cnty. Dist. Atty's Office,*** 163 A.3d 1139 (Pa.Cmwlth. 2017).

The RTKL does not "force an agency to investigate the authenticity of a document that purportedly originates from a separate agency not under its supervision or control and that the agency only possesses by virtue of a RTLK request." ***Philadelphia Dist. Atty's Office v. Cwiek,*** 169 A.3d 711 (Pa.Cmwlth. 2017).

Section 1101 – Filing of Appeals

Requesters waive any arguments regarding whether records should be disclosed that they do not raise before the OOR. ***Brown v. Pennsylvania Dep't of State,*** 123 A.3d 801 (Pa. Cmwlth. 2015); ***Fort Cherry Sch. Dist. v. Coppola,*** 37 A.3d 1259 (Pa.Cmwlth. 2012).

In ***Barnett v. Pennsylvania Dept. of Public Welfare,*** 71 A.3d 399 (Pa.Cmwlth. 2013), the Commonwealth Court held that a requester's appeal to the OOR was not deficient even though it did not address all reasons for denial provided by the agency.

The agency denied the request, citing several specific exceptions. The denial also included an attachment, which contained numerous other potential reasons for denial. The requester

Requesters…are not permitted to request records on appeal that were not part of the initial request to the agency.

Agencies must notify third parties that may have an interest in requested records so that they can participate in the process.

appealed to the OOR and addressed the specific reasons given by the agency and explained why those reasons were insufficient.

The court held that the requester was not required to address the list of "potential" reasons for denial because the agency did not explain why or how they applied to the request.

Requesters must tell the agency what they want in a request. They are not permitted to request records on appeal that were not part of the initial request to the agency. ***Pennsylvania Dept. of Corrections v. Disability Rights Network of Pennsylvania,*** 35 A.3d 830 (Pa. Cmwlth. 2012). Likewise, the OOR cannot refashion requests to make them conform to the RTKL. ***Pennsylvania State Police v. Office of Open Records,*** 995 A.2d 515 (Pa.Cmwlth. 2010).

Requesters should file a complaint in mandamus or a motion for civil contempt, instead of a petition to enforce, to enforce a final determination issued and not appealed. In ***Ledcke v. County of Lackawanna,*** No. 12-CV-6791, 2013 WL 504447 (Lackawanna C.C.P. Feb. 7, 2013) (unpublished).

The OOR and its appeals officers have authority to order and undertake in camera review of documents that have been withheld or redacted where, in the appeals officers' judgment, in camera review is necessary to develop an adequate record to rule on the agency's claims of privilege or exemption. ***County of Berks v. Office of Open Records,*** 204 A.3d 534 (Pa.Cmwlth. 2019); ***UnitedHealthcare of Pennsylvania, Inc. v. Pennsylvania Dept. of Human Services,*** 187 A.3d 1046 (Pa.Cmwlth. 2018); ***Highmark Inc. v. Voltz,*** 163 A.3d 485 (Pa. Cmwlth. 2017); ***Township of Worcester v. Office of Open Records,*** 129 A.3d 44 (Pa.Cmwlth. 2016); ***Office of Open Records v. Center Township,*** 95 A.3d 354 (Pa.Cmwlth. 2014).

Agencies must notify third parties that may have interest in requested records so that they can participate in the process. ***Pennsylvania Public Utility Commission v. Sunrise Energy, LLC,*** 177 A.3d 438 (Pa.Cmwlth. 2018). The RTKL does not require the OOR to notify third parties that have direct interests in appeals. ***Pennsylvania Turnpike Comm'n v. Electronic Transaction Consultants Corp.,*** 230 A.3d 548 (Pa.Cmwlth. 2020).

If an agency raises new grounds for denial of a request on appeal, as a matter of due process, requesters are entitled to respond. ***Wishnefsky v. Pennsylvania Dep't of Corrs.,*** 144 A.3d 290 (Pa. Cmwlth. 2016).

Section 1301 – Commonwealth Agencies, Legislative Agencies, and Judicial Agencies

In ***Meguerian v. Office of Atty. Gen.,*** No. 882 C.D. 2013, 2013 WL 6046978 (Pa.Cmwlth. Nov. 14, 2013) (unpublished), the Commonwealth Court permitted an appeal even though the party filing the appeal did not submit the request. Instead, the request was submitted by the attorney for the woman who filed the appeal. The court found that the attorney was a party in interest with a right to appeal the agency's denial of the request and permitted him to replace his client as the proper petitioner on appeal.

The automatic stay provisions also apply to petitions for review filed by third parties. "To do otherwise would nullify our RTKL jurisprudence recognizing third-party appeal rights as on equal footing with that of a requester or

an agency as specified in Section 1301(a) of the RTKL." That stay applies to all records at issue regardless of the basis for the exemption, who asserted it, or who preserved it. ***Baron v. Commonwealth, Dept. of Human Services,*** 169 A.3d 1268 (Pa.Cmwlth. 2017).

Sections 1302-1303 – Standard and Scope of Review for OOR Final Determinations

Mandamus actions are the proper vehicle when requesters do not appeal final determinations on the merits, but instead seek compliance with them because 1) the agency has a duty to produce public records; 2) the final determination establishes the requester's right to the records; and 3) the requester has no other remedy at law because the RTKL is silent as to the enforcement of final determinations. ***Capinski v. Upper Pottsgrove Twp.,*** 164 A.3d 601 (Pa. Cmwlth. 2017).

Courts may conduct their own fact-finding, are not limited to the record established by the OOR and can accept additional evidence or send the matter back to the OOR for additional fact gathering. ***Bowling v. Office of Open Records,*** 75 A.3d 453 (Pa. 2013).

Agencies cannot supplement the record before a court after failing to show why exemptions apply in the first place. In ***Pennsylvania State Police v. Muller,*** 124 A.3d 761 (Pa. Cmwlth. 2015), the court held that "[a]bsent a showing of necessity particular to the circumstances presented, we are wary of permitting supplementation lest we incentivize an obfuscatory practice in proceedings below that is contrary to the clear intent of the RTKL."

Courts do not exercise sound discretion when they do not review a challenged document in camera but instead rely on an affidavit that the Office of Open Records already found lacking. ***American Civil Liberties Union of Pa. v. Pa. State Police,*** 659 Pa. 504 (2020).

The requester must present evidence of bad faith to justify the imposition of costs or penalties.

Section 1304 – Court Costs and Attorney Fees

Section 1304 "seeks to remedy the damage to the requester where an agency has denied access to records in bad faith and to the agency where a requester has launched a frivolous challenge to a denial of access by restoring the requester or the agency to the place where each would have been prior to petitioning the court for review." ***Office of Dist. Att'y of Phila. v. Bagwell,*** 155 A.3d 1119 (Pa.Cmwlth. 2017).

Attorney fees may be awarded when the receiving agency's determination is reversed by a court and the agency deprived the requester of access to records in bad faith. ***Uniontown Newspapers, Inc. v. Pennsylvania Dept. of Corrections,*** 243 A.3d 19 (Pa. 2020).

The RTKL reserves bad faith determinations for the courts. ***Bowling v. Office of Open Records,*** 621 Pa. 133 (2013). The lack of good faith compliance with the RTKL and the failure to perform mandatory duties under the law rises to the level of bad faith. ***Office of Dist. Att'y of Phila. of Bagwell,*** 155 A.3d 1119 (Pa. Cmwlth. 2017). The requester must present evidence of bad faith to justify the imposition of costs or penalties. ***Barkeyville Borough v. Stearns,*** 35 A.3d 91 (Pa.Cmwtlh. 2012).

Where the legal challenges presented are of arguable merit and not frivolous, the award of attorneys' fees is not warranted. ***City of Harrisburg v. Prince,*** 186 A.3d 544 (Pa.Cmwlth. 2018); ***Parsons v. Urban Redevelopment Authority,*** 893 A.2d 164 (Pa.Cmwlth. 2006).

In ***Staub v. City of Wilkes-Barre,*** No. 2140

Agencies need not make prepayment demands in their initial response if they are invoking a 30-day extension period.

C.D. 2012, 2013 WL 5520705 (Pa.Cmwlth. Oct. 3, 2013) (unpublished), the court upheld an order directing an agency to pay 10 percent of the costs incurred by the requester to appeal a denied request.

In this case, the agency requested information from a third party to respond to a request. The third party refused to turn over any records based on its belief that they were not public, and the agency merely forwarded the third party's response to the requester.

The court held that the agency did not fully discharge its duty by merely forwarding the request to the third party and then providing its response to the requester. Instead, the agency had a duty to independently determine the existence or non-existence of the records but failed to do so. As a result, the court ruled that sanctions were appropriate.

Section 1305 – Civil Penalty

The purpose of Section 1305 is "to penalize the conduct of [an] agency and to provide a deterrent in the form of a monetary penalty in order to prevent acts taken in bad faith in the future." The focus is not on the mental state of the actor but the actions taken by the agency. ***Office of Dist. Att'y of Phila. v. Bagwell,*** 155 A.3d 1119 (Pa.Cmwlth. 2017).

Where an agency did not conduct a thorough search for responsive records until after the appeals process concluded, and its actions resulted in years of litigation, it acted in bad faith and warranted the maximum statutory civil penalty. ***Uniontown Newspapers, Inc. v. Pennsylvania Dept. of Corrections,*** 185 A.3d 1161 (Pa.Cmwlth. 2018).

The failure to cite any legal authority in support of its denial or make any good-faith search for records warranted a $500 penalty. ***Office of Dist. Att'y of Phila. v. Bagwell,*** 155 A.3d 1119 (Pa.Cmwlth. 2017).

Section 1307(b) – Prepayment

Agencies may condition their disclosure of public records upon receipt of payment for fees where the total costs are expected to exceed $100. ***Commonwealth, Dept. of Transp. v. Drack,*** 42 A.3d 355 (Pa.Cmwlth. 2012).

In ***Pennsylvania Dept. of Educ. v. Bagwell,*** 131 A.3d 638 (Pa.Cmwlth. 2016), the Commonwealth Court laid out the procedure through which agencies may demand prepayment under the RTKL.

Agencies need not make prepayment demands in their initial response if they are invoking a 30-day extension period. The court held that "a fee estimate does not need to be included in the first response, sent within five business days, to a requester." At a minimum, "a fee estimate should represent the cost of duplicating and sending public records, not potentially responsive records, to a requester." *(emphasis in original)* It is permissible to include records that may require redaction in the agency's prepayment estimate.

In addition, the "agency is not permitted to seek prepayment until it has reviewed the request, reviewed responsive records, and decided it is granting access to certain records reviewed." In addition, agencies cannot reserve their reasons for withholding records to a future response that would be made outside the 30-day extension period.

Section 1307(f) – Waiver of Fees

Where an agency wishes to deny a request for the waiver of duplication fees, it must state a non-discriminatory reason for the denial. Reasons for non-waiver are considered non-discriminatory unless they violate a constitutional, contractual, statutory, or regulatory right

of the requester. ***Commonwealth, Dept. of Public Welfare v. Froelich,*** 29 A.3d 863 (Pa.Cmwlth. 2011); ***see also Prison Legal News v. Office of Open Records,*** 992 A.2d 942 (Pa.Cmwlth. 2010).

Section 1307(g) – Labor Costs Not Recoverable

Agencies cannot charge requesters for time spent by their employees to respond to a RTKL request. ***State Employees' Retirement Sys. v. Office of Open Records,*** 10 A.3d 358 (Pa. Cmwlth. 2010).

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