Pennsylvania Milk Marketing Board Right-to-Know Law Policy

Effective January 1, 2009

Pursuant to Section 504 of the Right-to-Know Law, 65 P.S. § 67.101 et seq. (RTKL), the Pennsylvania Milk Marketing Board ("Board") sets forth the following policies, process and procedures, regarding responses by the Board to requests made pursuant to the RTKL, in addition to complying with the policies set forth in *Management Directive 205.36, Right-To-Know Law* (Effective January 1, 2009).

REQUESTS

A written request to the Board under the RTKL **must**:

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

   Doug Eberly
   Chief Counsel
   Pennsylvania Milk Marketing Board
   2301 N. Cameron Street
   Harrisburg, PA 17110
   fax: (717) 783-6492
   deberly@state.pa.us;

2. Identify a name and address to which the Board should address its response;

3. Indicate that the request is being made pursuant to the RTKL;

4. Be submitted in person, by mail, by facsimile, or by email;

5. Be sufficiently specific to enable the Board to ascertain which records are being requested; and

6. Be from a person that is a legal resident of the United States.

While verbal requests may be fulfilled by the Board, the requester cannot pursue the relief and remedies provided under the RTKL unless the request is in writing.

RTKL requests may be made with the form available at the Web site of the Office of Open Records at: http://openrecords.state.pa.us.

The regular business hours of the Board are 8:00 AM to 4:00 PM, Monday through Friday. Any RTKL request received by the Board after the close of regular business hours shall be deemed to have been received on the following business day.

RTKL requests received by the Board will be considered "public record" information by the Board and such requests may be made available for public access through its Web site.

RESPONSES

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

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

Interim Responses

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

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

1. The RTKL request requires redaction of a public record;

2. The RTKL request requires retrieval of a record from a remote location;

3. A response within the five business day period cannot be accomplished due to bona fide staffing limitations, which limitations must be specified in the interim response;

4. A legal review is necessary to determine whether the record requested is subject to access under the Act;

5. The requester has not complied with the Board's policies regarding access to public records;

6. The requester has not complied with a demand for prepayment of fees, which are required to fulfill the RTKL request and which are estimated to exceed $100; further, if prepayment of fees is required by the Board, the time period for

response shall be tolled from the time the demand for payment is made until such time as payment is actually received; or

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

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

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

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

Final Responses

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

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

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

Redaction

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

redact the portions of a public record that are not public records and produce the portions that are public records.

Access

The Board may provide a requester with access to inspect a record electronically or as otherwise maintained by the Agency, either: 1) by providing access in the Board office, if agreed to by the requester; 2) by sending a copy to the requester; or 3) by notifying the requester that the record is available through publicly accessible electronic means and, if the requester writes to the Agency within 30 days that the requester is unable or unwilling to access the information electronically, by then providing the records in paper format, upon payment for the same.

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

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

The Board is not required to create a public record that does not already exist, nor is it required to compile, maintain, format, or organize a public record in a manner in which the Board does not currently do so.

Duplication of Public Records

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

APPEALS

When a request is denied or deemed denied, whether in whole or in part, the requester may file an appeal with the Office of Open Records (“OOR”), where it will be assigned to an Appeals Officer. This appeal must be filed within 15 business days of the denial or deemed denial. The appeal must state the grounds upon which the requester asserts that the record is public, and should address any grounds stated by the Board for delaying or denying the request. The appeal shall be sent to the OOR at the address set forth below and simultaneously to the Board AORO, in the same manner as the appeal is sent to the OOR (e-mail, fax, mail or hand delivery) with: 1)

the Agency response, 2) the RTKL request; and 3) the appeal form that is available on the OOR Web site.

The Commonwealth Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
Phone: (717) 346-9903
openrecords@state.pa.us

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

For further information on appeals, it is suggested that the requester review the Web site of the Office of Open Records.

FEES

Applicable fees to be charged by the Board under the RTKL are as follows:

Fees Determined by the Office of Open Records

Under the RTKL, the Office of Open Records has the authority to establish two fees for commonwealth agencies: (1) Duplication, 65 P.S. § 67.1307(b) and (2) Enhanced Electronic Access (an agency may establish user fees, subject to approval by the Office of Open Records), 65 P.S. § 67.1307 (e).

The fees for duplication are established by the Office of Open Records, as posted on its Web site at http://openrecords.state.pa.us. The Board will charge $0.25 per page for duplication.

Pursuant to this agency policy, an agency may waive duplication fees for 20 pages or less. Duplication charges are to be paid for any duplication in excess of 20 pages.

Specialized Fees

1. The Board will charge $5 per copy for certified copies, when certified copies are requested by the requester.

2. The Board will charge the actual cost for postage, facsimile/microfiche or other media, as well as for specialized documents, except that postage fees will be waived for postage that costs under $1.

3. Special rules apply to fees for transcripts of administrative proceedings:

   a. Prior to an adjudication becoming "final, binding and non-appealable," transcripts may be requested through the Board, however the stenographer or court reporter is permitted to charge the regular fee for this service;
   b. Following an adjudication becoming "final, binding and non-appealable," a request for the transcript shall be treated like any other request for a record and the usual duplication fee of $0.25 per page will be charged.

Reasonable and Necessarily Incurred Costs

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

General

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

If the estimated fees that are required to fulfill the RTKL request exceed $100, the requester must pay the estimated amount in advance, either by certified check or by ordinary check, which must first have cleared to be considered received by the Board. The demand for prepayment will specify a reasonable period of time in which the requester must make such prepayment. Failure to make estimated payment by the date required by the Board in its interim response will result in the request being deemed withdrawn.

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

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