

<p>Commonwealth of Pennsylvania</p>  <p>Pennsylvania Board of Probation and Parole</p>	<p>Volume III Chapter 1</p> <p>Procedure 1.05.01</p>	<p>Replaces No. 9.0 effective 04/01/03</p>
<p>Chapter Title GENERAL, POLICY, ACCREDITATION</p>		<p>Date of Issue 04/27/2010</p>
<p>Subject RIGHT TO KNOW LAW POLICY AND PROCEDURE</p>		<p>Effective Date 05/11/2010</p>

I. AUTHORITY

The Chairman of the Board is granted the authority to “direct the operations of the Board and fulfill the functions established by th[e] act . . . including organizing, staffing, controlling, directing, and administering the work of staff.”¹ Additionally, the Board provides administrative support to the Sexual Offenders Assessment Board (SOAB), the Office of the Victim Advocate (OVA) and the Firearms Education and Training Commission (FETC). This policy is promulgated in accordance with the Right to Know Law (RTKL), Act 2008-03 P.L., 65 P.S. §§ 67.101-67.3104, enacted on February 14, 2008, effective in relevant part on **March 18, 2010**, and pursuant to Management Directive 205.36, as amended, effective January 1, 2009, which is incorporated herein by reference, and made a part of this policy.

II. PURPOSE

This policy establishes the procedures for requests for records under the RTKL regarding the (1) Board of Probation and Parole (PBPP); (2) Sexual Offenders Assessment Board (SOAB); (3) Office of the Victim Advocate (OVA); and (4) County Probation and Parole Officers Firearm Education and Training Commission (FETC), and outlines actions to be used to respond to request for information. These will collectively be referred to as the “PBPP” within this policy.

III. APPLICABILITY

This policy is applicable to the general public as well as all PBPP, SOAB, OVA and FETC employees, contract personnel and visitors.

IV. DEFINITIONS

When used in this policy, the terms defined shall have the meanings given to them in the: (1) RTKL, Act 2008-03 P.L., 65 P.S. §§ 67.101-67.3104, enacted February 14, 2008; and (2) Management Directive 205.36 Amended, Right-to-Know-Law, issued November 20, 2008.

V. POLICY

¹ Act of 1941, P.L. 861, No. 323 § 3 as amended Oct. 9, 1986, P.L. 1424, No. 134.

It is the policy of the PBPP to ensure that information is released in accordance with applicable law.

- A. The agency has a public information process that fosters contact with the public and the media. Employees and media representatives are informed of the process.
- B. Consistent with law and regulations, the agency collaborates with other justice system agencies and human service agencies in information gather, exchange, and standardization. Agency policy dictates what information can be accessed and disseminated.

VI. PROCEDURES

A. Requests for Records

1. RTKL requests may be made on the form available at the website of the Office of Open Records at: <http://openrecords.state.pa.us>, or the form at the website of the PBPP at <http://www.pbpp.state.pa.us/pbpp/site/default.asp>.
2. Written requests using the RTKL request form, or through other legible means, must be:
 - a. Addressed to the Agency Open Records Officer ("AORO") at Pennsylvania Board of Probation and Parole, Office of Policy, Legislative Affairs and Communications: *email*: RA-pbpprighttoknow@state.pa.us, *fax*: 717-705-1774, *mailing address*: Suite 5100, 1101 South Front Street, Harrisburg, PA, 17104-2517
 - b. Identify a name and address (electronic, or P.O. Box, street name and number with apartment number-if any, city, state and zip code) to which the PBPP should address its response;
 - c. State that the request is being made pursuant to the RTKL;
 - d. Be submitted in person, by email, fax or U.S. mail;
 - e. Be sufficiently specific to enable the AORO to ascertain which records are being requested; and
 - f. Be from a person who is a legal resident in the United States.
3. While verbal requests may be fulfilled by the PBPP, the requester cannot pursue the relief and remedies provided under the RTKL unless the request is in writing.
4. The regular business hours of the RTKL office are 8:30 a.m. to 4:45 p.m. Monday through Friday unless it is a state holiday or the state is closed due to extraordinary circumstances. Any RTKL request received by the PBPP AORO after the close of regular business hours shall be deemed to have been received by that office on the following business day.

B. Interim Responses

1. The PBPP must provide a final response to a RTKL request within 5 business days unless one or more specific conditions are satisfied and the AORO gives the requester written notice that additional time will be required. That notice is referred to as an "interim response."
2. The AORO may send an interim response if any of the following apply:
 - a. The request requires redaction of a public record;
 - b. The request requires retrieval of a record from a remote location;
 - c. The response cannot be accomplished due to bona fide staffing limitations (which limitations must be specified in the interim response);
 - d. A legal review is necessary to determine whether the record requested is subject to access under the RTKL;
 - e. The requester has not complied with the PBPP's policies regarding access to public records;
 - f. The requester has not complied with a demand for prepayment of fees, which are required to fulfill the RTKL request; further, if prepayment of fees is required by the PBPP, 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
 - g. The extent or nature of the request precludes a response within the required time period.
3. An interim response must be:
 - a. Sent to the requester on or before the last day of the 5 business day period (not counting the date of receipt, weekends or when the state government is closed);
 - b. State that the request is being reviewed and the reason for the review;
 - c. Provide an estimate of applicable fees owed when the record becomes available; and
 - d. State a reasonable date that a response is expected to be provided.
4. The interim response date must not be more than 30 calendar days from the end of the 5 business day period.
5. If the date of an expected response is in excess of 30 days (in addition to the five days allowed), the request will be deemed denied unless the requester has agreed in writing to the date specified in the notice.

C. Redaction

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

D. Means of Access

1. The PBPP may provide a requester with access to inspect a record electronically or as otherwise maintained by the PBPP, either by:
 - a. Providing access in the offices of the PBPP;
 - b. Sending a copy to the requester;
 - c. Notifying the requester that the record is available through publicly accessible electronic means, including, but not limited to:
 - 1) The PBPP website at <http://www.pbpp.state.pa.us/pbpp/site/default.asp>
 - 2) The Pennsylvania Treasury Department, Pennsylvania Contract E-Library database at website at <http://www.patreasury.org/Right-to-Know>.
 - 3) The Department of General Services which publishes solicitations, awards and contracts on its website at <http://www.emarketplace.state.pa.us>.
2. The PBPP has the discretion to determine the building(s) and room(s) that will be used to provide a requester with access to the PBPP's public records. The selection of buildings and rooms for access to the PBPP public records is a matter within the discretion of the AORO.
3. The PBPP 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 PBPP 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 PBPP must print it out on paper if the requester so requests.
4. The PBPP 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 PBPP does not currently do so.

E. Duplication of Public Records.

1. The PBPP will make its duplication equipment available to a requester by allowing only PBPP staff to utilize the equipment and make copies for the requestor.
2. The PBPP may require payment of duplication fees before processing the request. All applicable fees must be paid in order to receive access to the record requested.

F. Fees

1. Prepayment

- a. If the fees that are required to fulfill the RTKL request exceed \$25, it may be necessary for the requestor to pay the amount in advance.
- b. The requestor can pay by certified check or money order only.
- c. If the requestor fails to make prepayment within the specified time, the agency is not required to produce the records requested.

2. Office of Open Records

- a. The Office of Open Records has the authority under the RTKL 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).
- b. The fees for duplication are established by the Office of Open Records, as posted on its website at <http://openrecords.state.pa.us>.

3. PBPP

- a. Photocopies-one "photocopy" is either a single sided copy or one side of a double sided copy.
 - 1) 1 side of a standard 8.5" x 11" paper (less than 20 copies)-No charge
 - 2) 1 side of a standard 8.5" x 11" paper (more than 20 copies)- \$.25 per page.
- b. Media
 - 1) CD Rom-\$1.00 per CD
 - 2) Cassette Tape - \$1.00 per tape

- 3) Other-Actual cost
- c. Postage
 - 1) Material fitting into a standard #10 size business envelope-No charge.
 - 2) Other-Actual cost
- d. Certified Records-\$5.00 per certified record
- e. The agency does not have a fee for enhanced electronic access.
- f. Special rules apply to fees for transcripts of administrative proceedings:
 - 1) Prior to adjudication becoming “final, binding and non-appealable,” transcripts may be requested through the PBPP’s court reporting service; however the PBPP’s court reporting is permitted to charge the regular fee to the requestor for providing copies of transcripts.
 - 2) Following an adjudication becoming “final, binding and non-appealable,” a requestor must forward a blank cassette tape to the PBPP and the PBPP will duplicate its tape of the proceedings. The PBPP is prohibited by Copyright Laws from duplicating any copies of transcripts it may have since all transcripts of PBPP proceedings are developed by a third party court reporting service.
- g. Reasonable and Necessary Incurred Costs
 - 1) As expressly provided by 65 P.S. § 67.1307 (g), the PBPP has the authority to charge requesters reasonable fees for necessarily incurred cost.
 - 2) The PBPP will determine and charge such fees on a case by case basis.
- h. No charge shall be made for PBPP or legal review of the record to determine whether the requested records are public records that are subject to production.

G. Final Responses

1. There are three possible final responses. Either the request is:
 - a. Granted;
 - b. Denied; or
 - c. Granted in part, and denied in part.
2. The final written response must:

- a. Include an explanation of the procedure for the requester to appeal (if the requester chooses to do so);
 - b. Set forth the specific reasons for the denial, including a citation of supporting legal authority; and
 - c. 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.
3. Each of these options in paragraph 1 constitutes a "response" for purposes of the RTKL, as is the PBPP's written notice to the requester granting, denying or partially granting and partially denying access to a record.
4. The PBPP may send written responses to requesters by:
 - a. United States mail;
 - b. Hand delivery (in person or by delivery service);
 - c. Facsimile; or
 - d. Email.
5. Unless a longer period of time is needed and communicated to the requester by an "interim response" (as discussed above in paragraph B) the RTKL requires that the PBPP respond to an RTKL request within five business days. For purposes of determining the end of the five business day period:
 - a. The day that a RTKL request is received is not counted; and
 - b. The first day of the five business day period is the PBPP's next business day.
6. The failure to make a timely response is deemed to be a denial.
7. RTKL requests received by PBPP will be considered "public record" information. The PBPP may make these requests available for public access through its website.

H. Appeals

1. 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, where it will be assigned to an Appeals Officer.
2. This appeal must be filed within 15 business days of the denial or deemed denial.
3. The appeal must state:

- a. The grounds upon which the requester asserts that the record is public, and
- b. Should address any grounds stated by the PBPP for delaying or denying the request.

4. The appeal shall be sent to:

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

5. Other than the PBPP or the requester, a person or entity 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 PBPP's position in the appeal. The Appeals Officer may, but need not, grant the request.

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

VII. SUSPENSION DURING AN EMERGENCY

This policy and procedure may be suspended during an emergency for the PBPP at the sole discretion of the Chairman, or in the Chairman's absence, the Director of the Office of Policy, Legislative Affairs, and Communications.

VIII. RIGHTS UNDER THIS PROCEDURE

This policy and procedure does not create rights under the law.

IX. RELEASE OF INFORMATION AND DISTRIBUTION OF PROCEDURE

This policy and procedure does not contain information that impacts the security of the Board staff or parolees and will therefore be released to the public.

X. CROSS REFERENCES

A. Statutes

State

1. Act of 1941, P.L. 861, No. 323 § 3, as amended Oct. 9, 1986, P.L. 1424, No. 134 (61 P.S. § 331.3).

2. Pennsylvania Right-to-Know Law, Act 2008-03 P.L., 65 P.S. §§ 67.101-67.3104

B. PBPP Policies and Procedures

Communications, Release of Information, Procedure 1.04.01, issued September 5, 2008, effective December 19, 2008.

C. American Correctional Association

1. 4-APPFS-1C-01 Public Information
2. 4-APPFS-3D-34 Sharing of Information

D. Management Directives

205.36 Amended, Right-to-Know Law, issued November 20, 2008, effective January 1, 2009.