

OFFICE OF GENERAL COUNSEL

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 Office of General Counsel (“OGC”) sets forth the following policies, process and procedures, regarding responses by OGC to requests made pursuant to the RTKL, in addition to complying with the policies set forth in Management Directive 205.36, amended.

Management Directive 205.36 can be found at:

http://www.portal.state.pa.us/portal/server.pt?open=512&objID=711&&PageID=208571&level=3&css=L3&mode=2&in_hi_userid=2&cached=true

I. REQUESTS

A. A written request to OGC under the RTKL **must**:

1. Be addressed to the OGC Open Records Officer (“AORO”):

Martha Booth
Agency Open Records Officer
Office of General Counsel
333 Market St., 17th Floor
Harrisburg, PA 17101
Fax # 717-787-1788
Tel. # 717- 783-6563
e-mail: RA-RTK-ExecOff@state.pa.us

2. State that the request is being made pursuant to the RTKL;
3. Be submitted in person, by mail, by e-mail or by facsimile;
4. Be sufficiently specific to enable OGC to ascertain which records are being requested; and
5. Be from a person that is a legal resident of the United States.

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

- C.** RTKL requests may be made on the form available at the website of the Office of Open Records at: <http://openrecords.state.pa.us>. The regular business hours of the OGC RTKL Office are 8:30 a.m. to 4:30 p.m., Monday through Friday. Any RTKL request received by the RTKL Office after the close of regular business hours shall be deemed to have been received by that office on the following business day.

- D. RTKL requests received by OGC will be considered “public record” information by OGC and such requests may be made available for public access through its website.

II. RESPONSES

OGC will respond to a request within 5 business days. If a longer period of time is needed, OGC will provide an “interim response” (as discussed in paragraph A below). 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 OGC’s next business day.

The AORO may respond by providing a requester with access to inspect a record electronically or as otherwise maintained by OGC, either: 1) by providing access in the offices of OGC, 2) by sending a copy to the requester or 3) by notifying the requester that the record is available through publicly accessible electronic means. Each of these options is a "response" for purposes of the RTKL, as is OGC’s written notice to the requester granting, denying or partially granting and partially denying access to a record. OGC may send written responses to requesters by United States mail, by hand (in person or by delivery service), by facsimile or, by e-mail.

A. Interim Responses.

OGC 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."

OGC’s AORO may send an interim response if any of the following apply:

1. The RTKL request requires redaction of a public record;
2. The RTKL request requires retrieval of a record from a remote location;
3. A response within the 5 business day period cannot be accomplished due to bona fide staffing limitations, which 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 OGC’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 OGC, 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 from OGC will: 1) be sent to the requester on or before the last day of the 5 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 5 business day period.

If the date of an expected response is in excess of 30 days following the 5 business days referred to above, the request will be deemed denied unless the requester has agreed in writing to the date specified in the notice.

B. Final Responses.

There are three possible final responses from the AORO. 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 AORO will issue a final written response that will explain 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 to supporting legal authority. If the denial is the result of a determination that the record requested is exempt from disclosure, the AORO will include the specific reasons for that determination.

C. Redaction

The AORO 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. In that case, the portions of the record that are not public records will be redacted before the record is produced.

D. Access

The AORO may provide a requester with access to inspect a record electronically or as otherwise maintained by OGC, either: 1) by providing access in the offices of OGC, 2) by sending a copy to the requester or 3) by notifying the requester that the record is available through publicly accessible electronic means.

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

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

OGC 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 OGC does not currently do so.

E. Duplication of Public Records.

The AORO may either make copies or have copies made or, in its discretion, allow the requester to bring the necessary equipment to make its own copies. OGC may make its duplication equipment available to a requester but require that the requester operate the equipment, in which case the AORO will assign OGC staff to make the duplications, or the AORO will contract for duplication services and require the requester to pay the applicable rate.

III. 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, 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 AORO for delaying or denying the request. The appeal should 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

A person other than OGC 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 website of the Office of Open Records.

IV. FEES

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

A. Fees Determined by the Office of Open Records

Under the RTKL, the Office of Open Records has the authority to establish two fees for Commonwealth agencies: Duplication, 65 P.S. §67.1307(b) and Enhanced Electronic Access (an agency may establish user fees, subject to approval by 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 website at <http://openrecords.state.pa.us>. OGC will charge a maximum of \$.25 per page for duplication and currently does not have a fee for enhanced electronic access.

B. Specialized Fees

1. OGC will charge \$1 per copy for certified copies, when requested by the requester.
2. OGC will charge the actual cost for postage, facsimile/microfiche or other media, as well as for specialized documents.
3. Special rules apply to fees for transcripts of administrative proceedings:
 - (i) Prior to an adjudication becoming “final, binding and non-appealable,” transcripts may be requested through an agency, however the stenographer or court reporter is permitted to charge the regular fee for this service.
 - (ii) Following an adjudication becoming “final, binding and non-appealable,” a request for the transcript shall be treated like any other request for a record and the usual duplication fee of up to \$.25 per page will be charged.

C. Reasonable and Necessarily Incurred Costs

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

D. General

No charge shall be made for agency 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, it may be necessary for the requester to pay the estimated amount in advance, either by certified check or by ordinary check, which must first have cleared to be

considered received by OGC. The demand for prepayment may specify a reasonable period of time in which the requester must make such prepayment. If the requester fails to make prepayment within the specified time, OGC is not is not required to produce the records requested.

All applicable fees must be paid in order to receive access to the record requested. 65 P.S. §67.901.