



Commonwealth of Pennsylvania
Department of General Services

**DEPARTMENTAL
POLICY**

**GSP 4-12
Number**

Subject: Right-to-Know Law Policy (Amended)

Issued by:


James P. Creedon, Secretary

Date:

December 17, 2008
Effective January 1,
2009

- PURPOSE:** In compliance with Section 504 of the Right-to-Know Law, 65 P.S. §67.504 and Management Directive 205.36, the Department of General Services (DGS) adopts this amended Right-to-Know Law (RTKL) notice establishing the policy, process and procedures that DGS will follow when responding to requests made pursuant to the RTKL for access to or copies of public records.
- POLICY:** DGS will provide the public with access to public records to the fullest extent required by law consistent with DGS' duties and statutory obligations to protect the interests and rights of those who do business with DGS, their employees and our employees in compliance with the RTKL, 65 P.S. §§ 67.101-3104, Management Directive 205.36 (relating to agency responses to RTKL requests) and Manual 215.3, Procurement Handbook: Part I-Chapter 50 (relating to public access to procurement information).

To facilitate access to documents of public interest and reduce the need for RTKL requests, DGS makes many documents public. DGS publishes many solicitations, awards and contracts on its website at <http://www.emarketplace.state.pa.us/>; uploads contracts to the Department of Treasury website, pursuant to the requirements of Chapter 17 of the RTKL, 65 P.S. §§ 67.1701-1702; and may also place other public records on its website as it deems appropriate.

DGS will undertake legal review of a RTKL request related to litigation and will assert its right to extend the responsive time. DGS follows the rules of statutory construction in the computation of time under the RTKL. See 1 Pa.C.S. § 1908 (period of time referred to in statute is computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on a legal holiday, such day shall be omitted from the computation).

Pursuant to the provisions of the RTKL, DGS will not produce certain records, because they are not public records. These include:

- Competing proposals, during the evaluation/discussion processes of the competitive sealed proposals method of procurement, 65 P.S. §67.513(d)(f).
- Bids and proposals, including unsuccessful bids and proposals, unless and until a contract is awarded to one of the bidders or offerors, or until all bids have been rejected, 65 P.S. § 67.708 (b) (26);

c. Financial information contained in a sealed bid, sealed proposal or prequalification document of a bidder or offeror, which was requested in an invitation for bid or request for proposals, to demonstrate the bidder's or offeror's economic capability, 65 P.S. § 67.708 (b) (26).

d. The identity of individuals who serve on a departmental proposal evaluation committee or the notes and other records of a proposal evaluation committee established under 62 Pa.C.S. § 513. 65 P.S. § 67.708 (b)(26).

e. Names and personal information related to a contractor's employees when providing certified payroll records. *See Sapp Roofing Co. Inc. v. Sheet Metal Workers' Int'l. Assoc.*, 552 Pa. 105, 713 A.2d 627 (1998).

f. Social security numbers, driver's license numbers, and other confidential personal information contained in public records, 65 P.S. § 67.708 (b)(6)(i)(A).

g. Records which, if disclosed, would be reasonably likely to result in a substantial and demonstrable risk of physical harm or to the personal security of an individual. 65 P.S. § 67.708 (b) (1) (ii).

h. Records which, if disclosed, would create a reasonable likelihood of endangering the safety or physical security of a building, public utility, resource, infrastructure, facility or information storage system. 65 P.S. § 67.708 (b) (3). Examples of such records include, but are not limited to: blueprints, plans, and as-built drawings for public and private buildings, plans for highway and railroad bridges, plans for emergency response and evacuation, including Continuity of Government plans, counterterrorism protocols and other records involving public health and safety, the release of which could expose or create a vulnerability to malfeasance; or other sensitive security information.

i. Records relating to or resulting in a criminal investigation by the Capitol Police or other law enforcement agency, with the exception of police blotters. 65 P.S. § 708 (b) (16).

j. Any record that is not a Public Record, as that term is defined under the RTKL, unless the release of the record is not prohibited, and the Secretary determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

3. DEFINITIONS: When used in this policy, the terms that are defined in the RTKL have the meanings given to them in the RTKL. 65 P.S. §67.102. Other terms used in this directive have the following meanings:

a. Act or RTKL. 65 P.S. §§ 67.101-67.3104 (Act 2008-03).

b. Agency Open Records Officer or AORO. The official or employee designated by the Secretary to receive and respond to RTKL requests. Responses to RTKL requests by the AORO shall constitute action of the agency.

c. Appeals Officer. An attorney from the Office of Open Records who reviews an appeal from denial by an AORO of a written RTKL request.

d. Business Day. Any day other than a Saturday or Sunday, except those days when the offices of the agency are closed for all or part of a day:

- (1) Due to a state holiday.
- (2) Pursuant to Management Directives 530.71, Partial and Full Day Closings of State Offices and 505.7, Personnel Rules, Section 8.7, due to severe weather (such as a blizzard or ice storm).
- (3) Due to natural or other disaster.
- (4) At the request or direction of local, state, or federal law enforcement agencies or officials.

e. Deemed Denied. The denial of a request by means other than a verbal or written response. A request is deemed denied if one of the following conditions occurs:

- (1) The AORO fails to respond within the initial five business day period specified in the Act for response to RTKL requests.
- (2) The AORO extends the five business day period, as permitted by the RTKL, but then fails to respond by the end of that extended period.
- (3) The requester agrees to the extension, but the AORO fails to respond by the end of the agreed upon extension.

f. Department. Department of General Services.

g. Email Inbox. The Department's inbox for RTKL requests. DGS-RTK@state.pa.us

h. Interim Response. A written response from AORO to a requestor indicating that more than five business days will be required for a final response, due to specified circumstances.

i. Mailing Date. The date affixed to a response to a RTKL request, which is to be the date the response is deposited in the United States mail or, for a person submitting a RTKL request, the date of the postmark on the envelope transmitting the RTKL (if the postmark is illegible, the mailing date is deemed to be the first calendar day that immediately precedes the date on which the request is received and that is not a Sunday or a federal holiday), the transmission date affixed to a facsimile, the date stamp affixed by the agency to a RTKL request delivered by hand, or the transmission date affixed to an e-mail.

j. Records Custodian. Any department employee or contractor having custody, possession or control of a public records.

k. Records Legal Liaison. The attorney designated by the Chief Counsel to provide legal guidance to the AORO and RTKL coordinator.

l. Redaction. The eradication of a portion of a record while retaining the remainder.

m. RTKL Coordinator. The employee in the Office of Chief Counsel (OCC) designated to provide general administrative support to and document tracking for the AORO and the Records Legal Liaison.

n. RTKL Request. A written or verbal request for records that is submitted to the AORO which invokes the Act.

o. Secretary. The Secretary of the Department of General Services.

p. Sensitive Security Information. Information exempt from disclosure pursuant to 65 P.S. §67.708 (b) (1) (2), (3) and (4); and information related to the expenditure of funds from the U.S. Department of Homeland Security, the U.S. Department of Defense or other federal or state funds expended for homeland security, national defense, law enforcement or other public safety activities, including public health preparedness; or information related to the expenditure of funds to ensure the security of public utilities, infrastructure or other essential public resources.

q. Standard RTKL Form. The RTKL request form published by the Office of Open Records, which all agencies must accept. *See Office of Open Records website, at: <http://openrecords.state.pa.us>*

r. Website. The Department's publicly accessible website.

4. PROCEDURES FOR RESPONDING TO RTKL REQUESTS:

a. RTKL Requests.

(1) Written Requests. A written RTKL request to the Department must:

(a) Be addressed to the AORO at the address provided on the Department's website and set forth, as follows:

Agency Open Records Officer

Attn: Sharon Boyer, RTKL Coordinator

Department of General Services

603 North Office Building | Harrisburg, PA 17125

Fax: 717.787.9138 | Email: DGS-RTK@state.pa.us

(b) Be submitted in person, by mail, by e-mail or by facsimile to the address above, which is also specified on the Department's website.

(c) Identify a name and address to which the Department should address its response.

(d) State that the request is being made pursuant to the RTKL.

(e) Identify or describe the records sought with sufficient specificity to enable the Department to ascertain which records are being requested.

(f) Be from a person who is a legal resident of the United States.

(2) Verbal RTKL Requests. The Department may accept any verbal RTKL request. However, a requester who makes only a verbal request will not be able to pursue any relief provided by the RTKL.

(3) Forms. The Department will accept requests submitted on the form available at the website of the Office of Open Records at <http://openrecords.state.pa.us> or the form posted on the Department's website.

(4) RTKL Business Hours. The regular business hours of the AORO are 8:30

a.m. to 5:00 p.m. Monday through Friday. Any RTKL request received after regular business hours shall be deemed to have been received by the AORO on the following business day.

(5) Receipt of Request by AORO. The 5-business-day period does not begin to run until the RTKL request is received by the AORO. If an official or employee of the Department, other than the AORO, receives a RTKL request, that person should immediately forward the RTKL request to the Department's AORO.

b. Responses, in General.

(1) The AORO may respond by providing a requester with access to inspect a record electronically or as otherwise maintained by the Department, either: a) by providing access in the offices of the Department, b) by sending a copy to the requester or c) 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 the Department's written notice to the requester granting, denying or partially granting and partially denying access to a record. The Department may send written responses to requesters by United States mail, by hand (in person or by delivery service), by facsimile or, by e-mail.

(2) 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 AORO respond to an 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 Department's next business day.

c. Physical Access to Public Records.

(1) Unless otherwise provided by law, the Department will make its public records accessible for inspection by a requester during the regular business hours of the Department. In the case of a public record that is available only through electronic means, the Department may provide access to the public record at an office of the Department. This requirement may be satisfied by providing access (under supervision, as deemed appropriate, to prevent access to information which is not a public record of the Department) at a computer or computer terminal located in a public records access room.

(2) The Department will provide the 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, the Department is not required to convert that record to another medium, except that a requester may request that a public record which is only available electronically be converted to paper.

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

(4) The Department 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 it does not currently do so.

d. Interim Responses.

(1) The Department must provide a final response to a RTKL request within 5 business days unless one or more specific conditions are satisfied and the Department 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 applies:

(a) The RTKL request requires redaction of a public record.

(b) The RTKL request requires retrieval of a record stored at a remote location.

(c) A response within the 5-business-day period cannot be accomplished due to bona fide staffing limitations (including those resulting from business disruptions caused by weather and other occurrences), 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 Department'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 and which are estimated to exceed \$100. If prepayment of fees is required by the Department, 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.

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

(3) In addition to setting forth each applicable justification for the extension of time, the interim response must:

(a) Be sent to the requester on or before the last day of the 5-business-day period.

(b) Include a statement notifying the requester that the request for access is being reviewed.

(c) State a reasonable date when 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 unless the requester agrees in writing to a longer extension. If the date of an expected response is in excess of 30 days following the five days allowed for in § 901 of the RTKL, the request will be deemed denied unless the requester has agreed in writing to the date specified in the notice.

e. Final Responses.

(1) Types of Final Responses. The RTKL provides for three types of written

final responses to a RTKL request:

- (a) The AORO grants the entire RTKL request.
- (b) The AORO denies the entire RTKL request.
- (c) The AORO grants part of the RTKL request and denies the remainder.

(2) Deemed Denials. The failure of the AORO to make a timely final response is a deemed denial under the Act.

(3) Final Responses Granting Requests. Unless otherwise provided by law, a written RTKL request will be granted unless the record is exempt from disclosure.

(4) Redaction. If only portions of a record are public records, the AORO will not deny access to the record based upon the fact that portions are not public records. Rather, the AORO will redact the portions that are not public records and produce the portions that are public records.

(5) Final Responses Denying Requests, Either in Whole or in Part. If a written RTKL request is denied in whole or in part, the AORO will issue a final written response including the following:

- (a) A description of the record requested.
- (b) 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 Department's determination shall be included.
- (c) The typed or printed name, title, business address, business telephone number and signature of the AORO on whose authority the denial is issued.
- (d) The date of response.
- (e) The procedure to appeal the denial of access under the RTKL.

f. Duplication of Public Records.

(1) A public record must be accessible for duplication by a requester. The Department may either make copies itself or, in its discretion, allow the requester to bring the necessary equipment to make its own copies.

(2) The Department may make its duplication equipment available to a requester but require that the requester operate the equipment; assign its own staff to make the duplications requested by the requester; or contract for duplication services and require that the requester pay the contractor for those services.

5. APPEAL PROCESSES. Appeals of the AORO's denial for access to a document must be made to the Office of Open Records.

a. When a request is denied or deemed denied, whether in whole or in part, the requester may file an appeal with the Appeals Officer at:

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

b. A requester must file the appeal within 15 business days of the mailing date of a denial or deemed denial.

c. The appeal must state the grounds upon which the requester asserts that the record is public, and should address any grounds stated by the agency for delaying or denying the request.

d. A third party with a direct interest in the record 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, need not, grant the request.

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

6. FEES. The Department will assess fees as permitted by the Act.

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

b. If the estimated fees that are required to fulfill the RTKL request exceed \$100, the Department may require 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 the Department. The demand for prepayment will 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, the Department is not required to produce the records requested.

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

d. 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).

(1) Duplication. The fees for duplication are established by the Office of Open Records, as posted on its website at <http://openrecords.state.pa.us>.

Record Type	Fee
Copies: (A "photocopy" is either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5" x 11" page)	.25 per page
Certification of a Record:	\$1 per record, not per page. Please note that certification fees do not include notarization fees.
Specialized documents: For example, but not limited to, blue prints, color copies, non-standard sized documents	Actual Cost
Facsimile/Microfiche/Other Media: Conversion to Paper:	Actual Cost If a record is only maintained electronically or in other non-paper 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 unless the requester specifically requests for the record to be duplicated in the more expensive medium. (Sec. 1307(e)).
Postage Fees:	Fees for Postage May Not Exceed the Actual Cost of Mailing

(2) Transcripts of Administrative Proceedings:

(a) Prior to an adjudication becoming "final, binding and non-appealable," transcripts should be provided to the requester by the Department stenographer or a court reporter, in accordance with the published procedure of the Department or an applicable contract with the stenographer. The stenographer or court reporter is permitted to charge the regular fees 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 fees will be assessed according to the schedule established by the Office of Open Records.

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