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# PENNSYLVANIA RIGHT-TO-KNOW LAW CASE LAW INDEX

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**pennsylvania**  
OFFICE OF OPEN RECORDS

Since Pennsylvania’s Right-to-Know Law (“RTKL”) took full effect on January 1, 2009, it has been the subject of hundreds of appellate court cases. The *Pennsylvania Right-to-Know Law Case Law Index* was prepared by the Office of Open Records to help readers find appellate cases relevant to the most common subjects at issue in RTKL requests and appeals. It’s broken down by subject matter, and some cases appear under multiple section headings. This index does not include every appellate case, and you should not rely upon it in place of experienced legal counsel. If you have any questions or comments, please contact the Office of Open Records.

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Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
717-346-9903  
[openrecords@pa.gov](mailto:openrecords@pa.gov)  
<https://www.openrecords.pa.gov/>

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## Filing a RTKL Request

*These cases relate to interpretations of the statutory requirements for filing valid requests.*

Case	Date	Citation
<a href="#"><u>Pa. Gaming Control Board v. Office of Open Records</u></a>	November 10, 2014	103 A.3d 1276 (Pa. 2014)

**Request:** Communications between the Board and applicants for gaming licenses, as well as financial data provided to the Board.

**Holding:** Written RTKL requests must be addressed to an agency’s designated Agency Open Records Officer (AORO) in a meaningful way to trigger an agency’s duty to respond. A request need not refer or cite to the RTKL. It is the duty of each agency to determine how to implement the provision requiring that employees forward RTKL requests to the AORO.

Case	Date	Citation
<a href="#"><u>West Easton Borough v. Mezzacappa</u></a>	June 12, 2013	2013 Pa. Commw. Unpub. LEXIS 449 (Pa. Commw. Ct. 2013)

**Request:** Copies of unidentified emails.

**Holding:** An agency may not refuse to answer a request because of outstanding fees when those fees were the result of a deemed denial and thus not communicated to the requester. The requester is also not barred from disputing the validity of those fees through *res judicata*.

Case	Date	Citation
<a href="#"><u>West Easton Borough v. Mezzacappa</u></a>	September 6, 2013	74 A.3d 417 (Pa. Commw. Ct. 2013)

**History:** Requester requested records that she previously was granted access to, but then chose not to inspect.

**Holding:** A second request for the same information did not constitute a “disruptive request” under Section 506. The agency failed to prove that the Request placed an unreasonable burden on it. The fact that the agency had a small, part-time staff did not equate to an unreasonable burden. The Pennsylvania Rules of Civil Procedure do not apply to RTKL appeals, as they are statutory appeals.

Case	Date	Citation
<a href="#"><i>Philadelphia District Attorney’s Office v. Cwiek</i></a>	September 6, 2017	169 A.3d 711 (Pa. Commw. Ct. 2017)

**Request:** A certified copy of computer-assisted dispatch records regarding a vehicle stop.

**Holding:** Certification entails more than an attestation that the record is a true and correct copy of the record in the agency’s possession; rather, it verifies the authenticity of the document for purposes of admitting the record as evidence during pending or future litigation. However, the RTKL does not require an agency to investigate the authenticity of a document that originates from a separate agency not under its supervision or control and that it only possesses by virtue of a RTKL request.

Case	Date	Citation
<a href="#"><i>Butler v. Dauphin County District Attorney’s Office</i></a>	June 13, 2017	163 A.3d 1139 (Pa. Commw. Ct. 2017)

**Request:** All search warrants and inventory lists issued under a specific police incident number in the matter of *Commonwealth v. Cleveland Butler*, and two docket numbers. The Request specified certified copies of those records.

**Holding:** The Commonwealth Court held that an affirmation of an agency is sufficient to show the records are in fact certified records. In the instant case the affirmation provided by the District Attorney’s Office was sufficient to show that the records were certified even though the word “certified” did not appear on the documents.

## Specificity of Requests

*These cases relate to the requirement that a RTKL request be “sufficiently specific,” found in Section 703 of the RTKL.*

Case	Date	Citation
<a href="#"><u><i>Pa. Department of Education v. Pittsburgh Post-Gazette</i></u></a>	July 14, 2015	119 A.3d 1121 (Pa. Commw. Ct. 2015)

**Request:** All emails of the acting Secretary of Education for approximately one year.

**Holding:** To be sufficiently specific, a RTKL request should have (1) a subject matter that identifies the “transaction or activity” of the agency about which records are sought, (2) should identify a limited scope of responsive records, and (3) should have a finite timeframe. The broader each element is, the less likely a court will find a RTKL request to be specific. Because this request had no subject matter and a year-long timeframe, it was not sufficiently specific.

Case	Date	Citation
<a href="#"><u><i>Pa. Department of Conservation &amp; Natural Resources v. Vitali</i></u></a>	July 7, 2015	2015 Pa. Commw. Unpub. LEXIS 479 (Pa. Commw. Ct. 2015)

**Request:** All DCNR records from October 2010 until the date of the request that related to the Governor’s budget proposal to raise \$75 million dollars through nonsurface impact drilling on Commonwealth-owned land; reports, studies, memoranda, and correspondence relating to leasing additional Commonwealth land for oil or natural gas development; records showing Commonwealth land for which surface or mineral rights are under consideration for leasing; records showing the mineral rights owned by the Commonwealth in state parks; records showing calculations regarding revenue that could be generated by leasing additional Commonwealth lands for natural gas or oil development including all correspondence between the Governor’s Office of the Office of the Budget and DCNR that referenced the \$75 million dollar revenue estimate; and records including proposals, inquiries, or other communication made to DCNR from those that expressed interest in leasing Commonwealth lands for oil and gas development.

**Holding:** This request was specific, notwithstanding its breadth, because it featured a limited timeframe and a very specific subject matter. The agency failed to give a third party notice of the appeal, so that matter was remanded to the OOR for the agency to present evidence as to applicable exemptions.

Case	Date	Citation
<a href="#"><i>Commonwealth v. Legere</i></a>	July 31, 2012	50 A.3d 260 (Pa. Commw. Ct. 2012)

**Request:** All Section 208 determination letters issued on well operators since January 1, 2008.

**Holding:** A request for many records may be specific if there are no judgments to be made regarding how individual records relate to the request. Here, because the request sought one type of document mandated by statute and known to the agency, it was specific. Further, an agency cannot avoid disclosing existing public records by claiming, in the absence of a detailed search, that it does not know where the documents are, and that to require the agency to locate and produce them would implicate Section 705 of the RTKL.

Case	Date	Citation
<a href="#"><i>Pa. State Police v. Office of Open Records</i></a>	May 26, 2010	995 A.2d 515 (Pa. Commw. Ct. 2010)

**Request:** A variety of information from the PSP regarding vehicle stops and searches and the seizure of property taken from such vehicles.

**Holding:** The language used in part of the request, “Any and all records, files, or manual(s), communication(s) of any kind...” was insufficiently specific to enable the PSP to respond to the request. Context can be used to determine the meaning of a request, even if it appears from its face to be overbroad. However, to the extent that a request is partially insufficiently specific, the OOR may order disclosure of the portion of the request that is sufficiently specific.

Case	Date	Citation
<a href="#"><i>Pa. State Police v. Zloczower</i></a>	October 4, 2011	2011 Pa. Commw. Unpub. LEXIS 822 (Pa. Commw. Ct. 2011)

**Request:** A variety of police records, including certain enumerated records.

**Holding:** The fact that a request seeks a broad variety of material and is burdensome does not mean that a request is insufficiently specific. The phrase “any and all,” when applied to a category of records is insufficiently specific, but listing categories of records, i.e., “manuals relating to vehicle stops, searches, and seizures,” is sufficiently specific. When part of a request is sufficiently specific, it can be severed from the body of an insufficiently specific request and addressed separately.

Case	Date	Citation
<a href="#"><i>Easton Area School District v. Baxter</i></a>	January 24, 2012	35 A.3d 1259 (Pa. Commw. Ct. 2012)

**Request:** Copies of all emails sent and received by nine school board members, the district superintendent and the general school district email account over a 30-day period.

**Holding:** A request for emails that is limited to a 30-day period and identifies specific individuals is sufficiently specific for purposes of the RTKL, even when it does not request emails related to a specific subject matter.

Case	Date	Citation
<a href="#"><i>Pa. Department of Corrections v. Hilaire</i></a>	November 25, 2015	2015 Pa. Commw. LEXIS 528 (Pa. Commw. Ct. 2015)

**Request:** Records documenting inmate and employee injuries and deaths for five years.

**Holding:** Although the burden on an agency may be considered in a determination of specificity, it is not relevant where the burden is caused by an agency’s own file-keeping practices. While an injury report may contain medical information, it can be redacted and the entirety of the report is not necessarily exempt.



Case	Date	Citation
<a href="#"><i>Pa. Department of Corrections v. Disability Rights Network of Pa.</i></a>	January 12, 2012	35 A.3d 830 (Pa. Commw. Ct. 2012)

**Request:** Records reflecting “the number of admissions to psychiatric observations cells by institution and by month for the past two years” and records reflecting “the number of inmates ... who were (i) administered involuntary medications, (ii) placed on suicide watch, (iii) engaged in self-harm behavior, (iv) restrained for mental health purposes over the past two years.”

**Holding:** The agency argued that it did not maintain the statistical data requester sought, and the requester appealed to the OOR, arguing that the agency could produce certain forms, from which the requester could compile the data sought in its request. The court held that the requester had improperly attempted to modify, and add specificity to, his request at the appeal stage.

Case	Date	Citation
<a href="#"><i>Pa. Housing Finance Agency v. Ali</i></a>	March 7, 2012	43 A.3d 532 (Pa. Commw. Ct. 2012)

**Request:** Copies “of all correspondence, including proposal and sales agreements concerning item 4A – Restructuring of Mortgage Loan – Tasker Village[] found on the PHFA February 10, 2011 Agenda and, or distributed to the Board” and copies “of all correspondence, including proposal and sales agreements concerning item 4C Project Workout – Chestnut/56th Street Apartments found on the PHFA February 10, 2011 Agenda and, or distributed to the Board.”

**Holding:** The OOR interpreted the request as seeking only correspondence “distributed to the Board for the Agenda” and therefore held that the request was sufficiently specific. The Court held that this interpretation was incorrect, as it was not apparent from the face of the request.

Case	Date	Citation
<a href="#"><i>Pa. Office of Inspector General v. Brown</i></a>	December 21, 2016	2016 Pa. Commw. LEXIS 557 (Pa. Commw. Ct. 2016)

**Request:** Rules, regulations, policies or related authority that governs its duties and functions, that were specifically designed by the Office of Inspector General.

**Holding:** The Request was not sufficiently specific to advise the agency of what records were being requested and did not identify the agency transaction or activity for which the record was sought, thereby failing to provide any context by which the agency could narrow the search.

Case	Date	Citation
<a href="#"><i>Commonwealth v. Engelkemier</i></a>	October 14, 2016	148 A.3d 522 (Pa. Commw. Ct. 2016)

**Request:** Emails sent or received by the then-Chief of Staff to the Governor. The agency requested that the requester narrow the request, and the requester responded with a list of keywords.

**Holding:** A keyword list is not necessarily a substitute for a properly-defined subject matter(s) – i.e., a particular transaction or activity of an agency. A clearly-defined subject matter, such as “liquor privatization,” by contrast, has a better chance of passing the specificity test. However, in this instance, the agency did not object to the breadth, but merely suggested a rolling production schedule to which the requester agreed. Accordingly, although the list is “lengthy, and in some respects broad,” the agency waived this issue.

Case	Date	Citation
<a href="#"><i>Montgomery County v. Iverson</i></a>	August 15, 2012	50 A.3d 281 (Pa. Commw. Ct. 2012)

**Request:** An electronic copy of all email records to and from various email domains that included a list of keywords the agency could use to conduct a search.

**Holding:** A list of keywords will not substitute for a subject matter in analyzing specificity under the RTKL if those keywords are broad and do not serve to significantly narrow the universe of potentially responsive records.

Case	Date	Citation
<a href="#"><i>Askew v. Office of the Governor</i></a>	January 16, 2013	65 A.3d 989 (Pa. Commw. Ct. 2013)

**Request:** Any certified copies of the Senate and House bills ratified and presented to any past or present Governor of the Commonwealth of Pennsylvania that relinquished jurisdiction to the state over an address in Turtle Creek, PA.

**Holding:** The request was overly broad because it did not establish a timeframe, nor did it narrow the scope of the documents sought. Furthermore, a request cannot require an agency to conduct legal research to ascertain what is being sought.

Case	Date	Citation
<a href="#"><i>Mollick v. Worcester Township</i></a>	December 7, 2011	32 A.3d 859 (Pa. Commw. Ct. 2011)

**Request:** Any and all emails between certain township commissioners (as well as between commissioners and township employees) regarding any township business for previous five years.

**Holding:** Because the requester failed to specify the category or type of township business or activity for which he was seeking information, the request was insufficiently specific because it “would place an unreasonable burden on an agency to examine all its emails for an extended time period without knowing, with sufficient specificity, what [t]ownship business or activity the request is related.”

Case	Date	Citation
<a href="#"><i>Pa. Dep’t of Health v. Shepherd</i></a>	May 13, 2022	2022 Pa. Commw. Unpub. LEXIS 207 (Pa. Commw. Ct. 2022)

**Request:** All email correspondence between the Secretary and Executive Deputy Secretary for three days.

**Holding:** An agency which finds a sufficiently specific request unduly burdensome may not deny the request for that reason alone, although repeated or sequential requests within the *Post-Gazette* framework may be subject to Section 506. If an agency requires more time to respond to a request, it must timely make such application under APSCUF, rather than waiting until the end of the process.

Case	Date	Citation
<a href="#"><i>Hoyer v. County of Lebanon</i></a>	August 29, 2022	2022 Pa. Commw. Unpub. LEXIS 364 (Pa. Commw. Ct. 2022)

**Request:** Conflicts of interest which would prevent two attorneys from working on the same case

**Holding:** A request which requires an agency to exercise independent legal judgment is insufficiently specific, especially when it describes the contents of a document rather than identifying any specific type of document. A long delay in the appeal process is not grounds for judgment for the appellee.

Case	Date	Citation
<a href="#"><i>Pa. Office of the Governor v. Brelje</i></a>	February 23, 2024	2024 Pa. Commw. LEXIS 65 (Pa. Commw. Ct. 2024)

**Request:** Emails to and from two deputy press secretaries for periods of 10 to 20 days

**Holding:** The RTKL requires that a request be sufficiently specific, which includes a multi-part factor analysis as set forth in past cases. A review of prior cases shows that the elements are intended to ensure that the universe of records an agency is required to locate and review are sufficiently limited and certain. Additionally, in some cases an agency which wrongly denies a RTKL request for insufficient specificity may be entitled to additional time.

## Searching for Records

*These cases relate to the Agency Open Records Officer’s duty to conduct a “good faith search” for records upon receipt of a RTKL Request.*

Case	Date	Citation
<a href="#"><u>Commonwealth v. Legere</u></a>	July 31, 2012	50 A.3d 260 (Pa. Commw. Ct. 2012)

**Request:** All Section 208 determination letters issued on well operators since January 1, 2008.

**Holding:** The requester may not be penalized for an agency’s decision in storing information – if an otherwise-specific request seeks records that are kept in a way that is inconvenient for the agency to assess and access, that is not a legal basis for denial.

Case	Date	Citation
<a href="#"><u>Pa. State System of Higher Education (PASSHE) v. Association of Pa. State College and University Faculties (APSCUF)</u></a>	July 6, 2016	142 A.3d 1023 (Pa. Commw. Ct. 2016)

**History:** At issue was whether the requesters’ requests were sufficiently specific to enable the agencies to find the responsive records, whether the requests were made non-specific because they require the disclosure of a purportedly large number of records, and whether the agency should be given additional time to review each record given the number of records requested. The request sought more than 2,000 emails with attachments.

**Holding:** The fact that a request is burdensome does not deem it overly broad. Further, while the OOR cannot refashion a request, it may consider context available to the agency. Finally, when an agency claims it neither has the time nor resources to conduct a document-by-document review within the time-period required by the RTKL, the agency must 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. Based on the above information, the OOR can then grant any additional time warranted so that the agency can reasonably discern whether any exemptions apply.

Case	Date	Citation
<a href="#"><i>Paint Township v. Clark</i></a>	February 5, 2015	109 A.3d 796 (Pa. Commw. Ct. 2015)

**Request:** Township cell phone contract with Verizon, cell phone bills, name of the Township official authorizing the payments, content of all text, picture and video messages, and any stored data on the phone including browsing history.

**Holding:** Information stored on and regarding a private cell phone used by an Agency employee for Agency related business is public record and subject to the RTKL. The Agency is not required to create or compile data using forensic means but is required to provide the requested information in the manner in which it exists.

Case	Date	Citation
<a href="#"><i>Pa. Dep't of Health v. Mahon</i></a>	August 19, 2022	283 A.3d 929 (Pa. Commw. Ct. 2022)

**Request:** The number of patients certified to receive medical marijuana for various conditions

**Holding:** The language of exemption in the Medical Marijuana Act ties exempt status to patient information, and therefore does not protect certain aggregated information. Additionally, the evidentiary burden to demonstrate that a record does not exist is smaller than what is needed to show that an exemption applies.

Case	Date	Citation
<a href="#"><i>Hodges v. Pa. Department of Health</i></a>	August 25, 2011	29 A.3d 1190 (Pa. Commw. Ct. 2011)

**Request:** Sought licensing records related to Prison Health Services, Inc. and an inmate healthcare provider.

**Holding:** To meet its burden of proof that records do not exist, an agency must search for the records that are requested and provide a sworn statement or attestation that the records do not exist. An agency is not required to search for different possible spellings or classifications to prove that nothing was misfiled.

Case	Date	Citation
<a href="#"><i>In re Silberstein</i></a>	January 6, 2011	11 A.3d 629 (Pa. Commw. Ct. 2011)

**Request:** Sought various electronic communications between individual township commissioner, his constituents, and outside legal counsel regarding applications for development projects in the township.

**Holding:** In making a good faith determination of whether a requested record is a public record, the Agency Open Records Officer (AORO) is required, among other things, to direct requests to other appropriate persons within the agency. An AORO has a duty to inquire with public officials to determine whether the public official possesses a requested record that could be deemed public. It is then the AORO’s duty and responsibility to determine whether the record is public, subject to redaction, or exempt from disclosure.

Case	Date	Citation
<a href="#"><i>PG Publishing Co. v. Governor’s Office of Administration</i></a>	July 10, 2015	120 A.3d 456 (Pa. Commw. Ct. 2015)

**History:** This case consists of preliminary objections to an action in mandamus to compel agencies to retain records for two years.

**Holding:** The RTKL does not modify or mandate extensions to existing records maintenance laws and creates no duty that an agency must maintain records past the point at which they can be legally disposed of.

Case	Date	Citation
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<a href="#"><u>Breslin v. Dickinson Township</u></a>	May 24, 2013	68 A.3d 49 (Pa. Commw. Ct. 2013)
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**Request:** Sought copy of an email addressing township business currently in the possession of former township office manager.

**Holding:** While the RTKL does not require an agency to seek requested documents from former employees or officials, it does not forbid it either. Because the email at issue in this case was not in the township’s possession, custody, or control, and was not in the possession of a party who had been shown to be contracted by the township to perform a governmental function, the township had no obligation under the RTKL to obtain the email.

Case	Date	Citation
<a href="#"><u>Pa. State Police and The Municipal Police Officers’ Education and Training Commission v. McGill and The Pittsburgh Post-Gazette</u></a>	January 8, 2014	83 A.3d 476 (Pa. Commw. Ct. 2014)

**Request:** A list or database of officers accredited by MPOETC.

**Holding:** The names of public employees must be released unless they are engaged in undercover work, and budgets cannot be classified. However, because the PSP lacked the information necessary to determine which officers are working undercover and would have been forced to create a record by contacting each department, the request was properly denied.

Case	Date	Citation
<a href="#"><u>Pa. Department of Labor &amp; Industry v. Earley</u></a>	September 9, 2015	126 A.3d 355 (Pa. Commw. Ct. 2015)

**Request:** Emails relating to a printer and ink cartridges.

**Holding:** The provision of affidavits by the individuals named in the request was insufficient to prove the nonexistence of responsive records; the agency also needed to search its server.



## What is a Record?

*These cases relate to the definition of a record, and how to determine if it is a record of an agency. The RTKL only provides for access to records of an agency.*

Case	Date	Citation
<a href="#"><u><i>Office of the Governor v. Bari</i></u></a>	May 4, 2011	20 A.3d 634 (Pa. Commw. Ct. 2011)

**Request:** Minutes of board meetings, as well as letters and memos.

**Holding:** The RTKL defines “record” as “[i]nformation . . . 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.” A record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record. An agency may not deny a request as burdensome simply because it has been filed twice, or because it has come at a busy time for the agency.

Case	Date	Citation
<a href="#"><u><i>Meguerian v. Pa. Office of the Attorney General</i></u></a>	November 14, 2013	86 A.3d 924 (Pa. Commw. Ct. 2013)

**Request:** All emails, in electronic and searchable format, reflecting communications by and between Jessie Smith and specified individuals using a Dauphin County email between January 1, 2011 through January 30, 2013.

**Holding:** Emails sent from a public employee’s work email are records of their agency only if they are related to that agency’s business. Further, an attorney’s client does not have standing to appeal a denial of their attorney’s request.

Case	Date	Citation
<a href="#"><u>Walker v. Pa. Insurance Department</u></a>	January 15, 2012	2012 Pa. Commw. Unpub. LEXIS 425 (Pa. Commw. Ct. 2012)

**Request:** Records relating to an insurance appraisal and to individuals who handled a specific insurance matter.

**Holding:** A Request that seeks answers to questions rather than specific documents is not a valid request under the RTKL. Also, the OOR is entitled to rely on unrebutted, sufficiently detailed attestations from the agency.

Case	Date	Citation
<a href="#"><u>Gingrich v. Pa. Game Commission</u></a>	January 12, 2012	2012 Pa. Commw. Unpub. LEXIS 38 (Pa. Commw. Ct. 2012)

**Request:** Records relating to deer harvest and habitat, and for related financial information. The Requester sought information contained in the Game Commission’s database and suggested possible formats for the Commission to produce that information.

**Holding:** A request for information is a request for a record under the RTKL. A request for data seeks records. Drawing information from a database does not constitute creating a record under the RTKL. Suggesting a possible format in which to present the requested information was not an improper request to create a record. An agency can be required to draw information from a database, although the information must be drawn in formats available to the agency.

Case	Date	Citation
<a href="#"><u>Allegheny County Department of Administrative Services v. A Second Chance, Inc.</u></a>	February 16, 2011	13 A.3d 1025 (Pa. Commw. Ct. 2011)

**Request:** Payroll lists of employees of three entities, including the third-party contractor, with which the county had contracts.

**Holding:** In order for third-party records to be considered public records under the RTKL, they must be in the possession of the contracting party and must directly relate to the governmental function. Third parties may intervene at any point during a RTKL request or appeal and are not barred later if they do not participate initially.

Case	Date	Citation
<a href="#"><i>Pa. Office of Attorney General v. The Philadelphia Inquirer</i></a>	November 19, 2015	127 A.3d 57 (Pa. Commw. Ct. 2015)

**Request:** Copies of all emails that were of a personal nature and involved pornographic or otherwise inappropriate material to or from the accounts of former employees.

**Holding:** The emails only related to personal activity of individuals. While the public has the right to access “records” relating to agency employees and its “transactions” or “activities,” the RTKL does not compel disclosure of all agency emails solely on the basis that they violate an agency policy. Emails are not records under the RTKL merely because they were sent or received using an agency email address or by virtue of their location on an agency computer.

Case	Date	Citation
<a href="#"><i>Easton Area School District v. Baxter</i></a>	January 24, 2012	35 A.3d 1259 (Pa. Commw. Ct. 2012)

**Request:** Copies of all emails sent and received between a certain 30-day period, for the email addresses of nine school board members, the district superintendent and the general school district.

**Holding:** Not all emails on agency servers are public records. An email is a public record when it documents a transaction or activity of an agency and was created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency, pursuant to Section 102.

Case	Date	Citation
<a href="#"><i>Brown v. Monroe County</i></a>	May 13, 2022	280 A.3d 344 (Pa. Commw. Ct. 2022)

**Request:** A copy of the move sheet and callout sheet for the Requester.

**Holding:** While a litigation hold may apply to records which have been requested, if records have been purged prior to receipt of a request no litigation hold can issue. Nothing in the RTKL supersedes an agency’s ordinary records retention schedules. Failure to file a brief with the trial court is not necessarily grounds for an automatic judgment.

Case	Date	Citation
<a href="#"><i>Pa. Department of Labor &amp; Industry v. Tabor</i></a>	March 31, 2016	2016 Pa. Commw. Unpub. LEXIS 251 (Pa. Commw. Ct. 2016)

**Request:** An itemized cellphone bill and email records for an identified employee for ten months.

**Holding:** A request for records may seek only records that exist at the time the filing is received by the agency; otherwise responsive records which post-date the request need not be provided. Furthermore, where there is no evidence before the OOR that records pertain to any transaction or activity of an agency, those records do not meet the definition of “public record” in the RTKL.

Case	Date	Citation
<a href="#"><i>In re Silberstein</i></a>	January 6, 2011	11 A.3d 629 (Pa. Commw. Ct. 2011)

**Request:** Electronic communications between a township commissioner, constituents, and outside legal counsel regarding applications for development projects in the township.

**Holding:** Communications between an individual township commissioner and citizens of the township maintained on the commissioner’s personal computer were not “public records” subject to disclosure. Unless the emails and other documents in the Commissioner’s possession were produced with the authority of the agency, or were later ratified, adopted or confirmed by the agency, the requested records cannot be deemed “public records” under the RTKL.

Name	Date	Citation
<a href="#"><i>Barkeyville Borough v. Stearns</i></a>	December 29, 2011	35 A.3d 811 (Pa. Commw. Ct. 2011)

**Request:** Communications between named members of the borough council, including emails.

**Holding:** Emails written by an agency official, discussing agency business, are records of an agency even if they are maintained on a private computer. Attorney’s fees under the RTKL may only be awarded due to bad faith, an unreasonable interpretation of the law, or a frivolous appeal.

Name	Date	Citation
<a href="#"><i>Mollick v. Worcester Township</i></a>	December 7, 2011	32 A.3d 859 (Pa. Commw. Ct. 2011)

**Request:** Emails between certain township commissioners and township employees regarding Township business, regardless of whether they were transmitted on personal computers or personal email accounts.

**Holding:** Emails exchanged between a majority of the township’s supervisors on their personal computers regarding township business or activities may be “records of the agency.” The question in determining whether an email was a public record is whether the record documented business of the township, not whether it was transmitted using a township computer or email address.

Name	Date	Citation
<a href="#"><i>Commonwealth v. Cole</i></a>	September 12, 2012	52 A.3d 541 (Pa. Commw. Ct. 2012)

**Request:** Records involving the Pennsylvania Sunshine Program, which provides rebates to homeowners and small businesses for solar electric projects they install on their property.

**Holding:** A “record” subject to disclosure under the RTKL includes information “regardless of form” and includes information contained in a database. Pulling information from a database is not the creation of a record, and therefore may be required under the RTKL.

Name	Date	Citation
<a href="#"><u>Clearfield County v. Bigler Boyz, Enviro, Inc.</u></a>	July 28, 2016	144 A.3d 258 (Pa. Commw. Ct. 2016)

**Request:** All records related to the consideration of the requester as a HAZMAT vendor.

**Holding:** Handwritten notes made by a county commissioner recording unsolicited input from private citizens were not records of the County because they did not document a transaction or activity of the County.

Name	Date	Citation
<a href="#"><u>Soto v. Pa. State Police</u></a>	May 7, 2018	2018 Pa. Commw. Unpub. LEXIS 246 (Pa. Commw. Ct. 2018)

**Request:** Records related to testing conducted on a liquid substance confiscated by a state trooper.

**Holding:** The fact that a Requester has a private right to records or otherwise requires access to the records does not mean that those records are public under the RTKL.

Case	Date	Citation
<a href="#"><u>Ctr. Cnty. Dist. Atty's Office v. Manivannan</u></a>	November 18, 2022	2022 Pa. Commw. Unpub. LEXIS 505 (Pa. Commw. Ct. 2022)

**Request:** Records related to the investigation, prosecution, and sentencing of the Requester

**Holding:** An appellee under the RTKL does not have a right to cross-examine the official who produces an attestation. Additionally, if a record does not exist and the only way to check for it on a “backup server” would require the creation of a new record, the RTKL does not compel the agency to initiate that process. Finally, an agency which does not have access to records due to unsound practices of past officials is not required to attempt to retrieve those records from those officials under the RTKL.

Case	Date	Citation
<a href="#"><i>Pennrest Sch. Dist. v. Cagle</i></a>	April 24, 2023	293 A.3d 783 (Pa. Commw. Ct. 2023)

**Request:** Facebook posts and comments by school board members related to LGBTQ issues following a news article featuring several such posts about one of the school libraries.

**Holding:** Posts on a social media platform constitute agency records only if they qualify under a nonexclusive factors test, including (1) the “trappings” of an agency account; (2) the relationship between the content of the posts and the business of the agency, and; (3) whether the posts were produced under the agency’s authority or later ratified by agency action.

Case	Date	Citation
<a href="#"><i>Wyoming Borough v. Boyer</i></a>	July 27, 2023	299 A.3d 1079 (Pa. Commw. Ct. 2023)

**Request:** Information concerning the Mayor of the Borough’s Facebook page.

**Holding:** Pursuant to *Cagle*, the proper test to use was the nonexclusive factors analysis. However, the court on remand notes that there is a much stronger argument for the private page of a mayor being a public record, as a mayor has certain executive duties they may perform on their own through such a platform.

## What is an Agency?

*These cases relate to the definition of a government agency under the RTKL. The RTKL can only be used to access records of a government agency.*

Case	Date	Citation
<a href="#"><u><i>Philadelphia Industrial Development Corp. v. Ali</i></u></a>	April 18, 2011	2011 Pa. Commw. Unpub. LEXIS 317 (Pa. Commw. Ct. 2011)

**Request:** Contracts, lists of personnel and salaries, and an enacting ordinance.

**Holding:** Although the Philadelphia Industrial Development Corporation (PIDC) performed certain government functions, it is not a “similar governmental entity” under the RTKL because it was not created by statute, is not a political subdivision, its members are not appointed exclusively by any political body, and it cannot be disbanded by statute. The extent of PIDC’s governmental functions, while significant, does not transform it into an agency.

Case	Date	Citation
<a href="#"><u><i>Scott v. Delaware River Valley Port Commission</i></u></a>	October 3, 2012	56 A.3d 40 (Pa. Commw. Ct. 2012)

**History:** Requester filed a request with the Delaware Valley Regional Planning Commission (DVRPC), an organization authorized by Congress to cooperate with state and public transportation operators to develop transportation improvement plans.

**Holding:** The DVRPC provides advisory services, which are not constitutionally mandated nor necessary for the operation of the Commonwealth, and does not perform an essential governmental function.



Case	Date	Citation
<a href="#"><i>Pysher v. Clinton Township Volunteer Fire Co.</i></a>	May 8, 2019	209 A.3d 1116 (Pa. Commw. Ct. 2019)

**Request:** Loan agreements, meeting minutes, bank statements and utility bills.

**Holding:** To determine whether a volunteer fire company is an agency under the meaning of the RTKL, the OOR must undertake a fact-specific inquiry into that fire company’s sources of funding, entanglement with local municipal government, and the identities of its members.

Case	Date	Citation
<a href="#"><i>Pysher v. Clinton Twp. Volunteer Fire Dep’t.</i></a>	May 24, 2023	2023 Pa. Commw. Unpub. LEXIS 280

**Request:** Various financial records, payments, loans, meeting minutes, etc.

**Holding:** The prior Pysher case established a factors analysis test to determine whether nonprofit entities like volunteer fire departments are local agencies under the RTKL. In this case, the court blesses an analysis emphasizing governmental function, the majority source of its funding, and the abilities of local municipalities to audit or otherwise control the fire department in ways other than simply appointing board members.

Case	Date	Citation
<a href="#"><i>Campbell v. Pa. Interscholastic Ath. Ass’n.</i></a>	November 30, 2021	268 A.3d 502 (Pa. Commw. Ct. 2021)

**Request:** Invoices, cleared check images, bank statements, line-item transactions and other communications

**Holding:** The PIAA is an agency under the RTKL due to its inclusion in the statute by name, and because it is an actor which takes state action and is funded by the state. However, PIAA did demonstrate that it should be granted an opportunity to redact certain invoices and satisfied its burden to show that certain records do not exist.

Case	Date	Citation
<a href="#">Pa. Interscholastic Athletic Ass'n v. Campbell</a>	February 21, 2024	2024 Lexis PA 288 (Pa. 2024)

**Request:** Invoices, cleared check images, bank statements, line-item transactions and other communications

**Holding:** The PIAA is an agency under the RTKL because it fits the definition of “Commonwealth Entity” under the law, and the Nonprofit Law does not make the agency’s records exempt because the indicia of the General Assembly’s intent indicate otherwise.

## Fee Issues

*These cases relate to fees assessed by an agency in response to a RTKL Request. With a few exceptions, agencies may only charge fees in accordance with the OOR’s [Official RTKL Fee Schedule](#).*

Case	Date	Citation
<a href="#">Pa. Department of Education v. Bagwell</a>	January 29, 2016	131 A.3d 638 (Pa. Commw. Ct. 2016)

**Request:** Letters, emails, memorandums and reports between the former Secretary of Education and 29 individuals working for Pennsylvania State University or board members, and between the former Secretary and former Governor and members of his executive staff and cabinet.

**Holding:** An agency is not required to provide a statement of prepayment within five business days of the Request. When a fee estimate is expected to exceed \$100, an agency is entitled to demand prepayment prior to granting a request at any time within their five-day response or within the thirty-day extension. However, an agency may only charge the Requester for records to which the agency is actually granting access – it is not entitled to charge a large fee and refuse to process the Request until prepayment is made. An agency should identify exempt records in its final response and cannot charge the Requester for those records.

Case	Date	Citation
<a href="#"><i>Brown v. Pa. Department of Corrections</i></a>	October 31, 2017	2017 Pa. Commw. Unpub. LEXIS 825 (Pa. Commw. Ct. 2017)

**Request:** Various items, including emails, inventory sheet and menu, from the Department of Corrections (DOC). DOC denied the request due to outstanding fees owed on a prior request.

**Holding:** An agency asserting unpaid fees as a basis for denying access to records has the burden of proving the requester’s indebtedness. In this case, the agency failed to meet its burden. The declaration offered by the Agency Open Records Officer was conclusory and did not identify the records previously copied or prepared, or the date on which they were prepared; nor did the declaration expressly state when the records were made available to the Requester or whether the agency notified the Requester of the amount due.

Case	Date	Citation
<a href="#"><i>Brown v. Pa. Department of Corrections</i></a>	December 15, 2017	2017 Pa. Commw. Unpub. LEXIS 920 (Pa. Commw. Ct. 2017)

**Request:** The Department’s Hepatitis C policy and protocol.

**Holding:** An agency may refuse to process a request for nonpayment of fees a Requester owes on an earlier request, but it must prove that those records were copied, prepared and actually made available to the Requester.

Case	Date	Citation
<a href="#"><i>Prison Legal News v. Office of Open Records</i></a>	April 8, 2010	992 A.2d 942 (Pa. Commw. Ct. 2010)

**Request:** Records relating to claims against the Department of Corrections for over \$1,000.

**Holding:** An agency may charge fees for requests as permitted by the statute, but they must explain the basis for the fee in their denial so that it may be reviewed on appeal. Furthermore, the RTKL’s

fee waiver provision is discretionary, and an agency’s decision not to waive fees is not reviewed on appeal.

Case	Date	Citation
<a href="#"><i>State Employees Retirement System (SERS) v. Office of Open Records</i></a>	November 4, 2010	10 A.3d 358 (Pa. Commw. Ct. 2010)

**Request:** Annual pension payments made to four retired legislators.

**Holding:** An agency may not charge fees for labor costs involved in reviewing records under Section 1307 of the RTKL. However, other labor fees may be passed along if they are necessarily incurred and reasonable under Section 1307(g) of the RTKL.

Case	Date	Citation
<a href="#"><i>Froehlich v. Pa. Department of Public Welfare</i></a>	October 11, 2011	29 A.3d 863 (Pa. Commw. Ct. 2011)

**Request:** Sought fee waiver when requesting documents from the Department of Public Welfare.

**Holding:** An agency has discretion to waive or require a fee, but it must provide a non-discriminatory rationale to the Requester for denial of a fee waiver. The OOR does not have jurisdiction to hear such denials; they must be appealed to a trial court.

Case	Date	Citation
<a href="#"><i>Pa. Department of Transportation v. Drack</i></a>	March 27, 2012	42 A.3d 355 (Pa. Commw. Ct. 2012)

**Request:** Sought copies of all Department of Transportation correspondence regarding a speed control device referred to as ENRADD; copies of all versions of calibration procedure used for ENRADD; and copies of all versions of operator’s and/or training manuals for ENRADD.

**Holding:** An agency must issue a final response to a request in the timeframes set forth even if the Requester owes the agency fees.



## Records in the Possession of Third Parties

*These cases relate to records that the agency does not physically possess but may be required to obtain in response to a RTKL Request.*

Case	Date	Citation
<a href="#"><u>SWB Yankees, LLC v. Wintermantel</u></a>	May 29, 2012	45 A.3d 1029 (Pa. 2012)

**Request:** Copies of all names and bids submitted to SWB Yankees, LLC, for a concessionaire contract at PNC field.

**Holding:** When an agency contracts with a third party to perform a non-ancillary part of that agency’s function, records dealing with that function become accessible through Section 506(d)(1) of the RTKL, even when they are not physically in the agency’s possession. To that end, while bids submitted for a concessionaire contract may seem to have little relation to the purposes of government, they are still government records when ownership of the stadium derives from the government.

Case	Date	Citation
<a href="#"><u>East Stroudsburg University Foundation v. Office of Open Records</u></a>	May 24, 2010	995 A.2d 496 (Pa. Commw. Ct. 2010)

**Request:** Sought lists of donors, donor files and minutes of the university’s foundation.

**Holding:** A university foundation that conducts fundraising activities on behalf of a university is performing a government function, and records of fundraising may be obtained through Section 506(d) of the RTKL.

Case	Date	Citation
<a href="#"><i>Municipality of Monroeville v. Drack</i></a>	July 16, 2013	2013 Pa. Commw. Unpub. LEXIS 561 (Pa. Commw. Ct. 2013)

**Request:** Records related to ENRADD speed timing devices, including “the procedure used to calibrate/test each ENRADD device every 60 days.”

**Holding:** Because statute requires law enforcement to calibrate ENRADD devices regularly, it is a governmental function, and the procedures used to test such devices directly relate to that function and may be reached through Section 506(d) of the RTKL. However, the contractor must be given the opportunity to present other defenses to disclosure, such as trade secret claims.

Name	Date	Citation
<a href="#"><i>Highmark, Inc. v. Voltz</i></a>	June 2, 2017	163 A.3d 485 (Pa. Commw. Ct. 2017)

**Request:** Records submitted by Highmark to the Insurance Department regarding certain reimbursement rate adjustments and adjustments to its provider fee schedule, as well as records evidencing the Department’s response to the forgoing.

**Holding:** Under the RTKL, third parties have due process rights, which consist of notice and an opportunity to be heard. However, a party is not entitled to a hearing. Additionally, the Accident and Health Filing Reform Act and the Professional Health Services Plan Corporations Act, which must be construed in *pari materia* as they pertain to the same subject matter and are part of the same regulatory scheme, exempt the disclosure of rate information. However, even if the Acts did not require the submission of rates to the Department, the rate information would not constitute records “of” the Department.

Case	Date	Citation
<a href="#"><u>West Chester University v. Schackner</u></a>	September 17, 2015	124 A.3d 382 (Pa. Commw. Ct. 2015)

**Request:** All records detailing the amount paid by the University’s Foundation to Bravo Group, a lobbying firm hired by the University, for a campaign to educate the public about and to engender support for the enactment of SB 1275 and for a copy of a contract between Bravo Group and the Foundation and its staff involving the campaign to secure its adoption.

**Holding:** The agency did not prove that the records were exempt under Section 708(b)(10). The court also held that the release of records from the university with regard to the lobbying efforts was proper under Section 506(d) of the RTKL, because the university contracted with the lobbyist firm to perform a governmental function on behalf of the university – namely, to influence legislation. Furthermore, where a third party serves largely as the alter ego of an agency, a court is more likely to find that a third party’s records are within the control of the agency.

Case	Date	Citation
<a href="#"><u>Dental Benefit Providers, Inc. v. Eiseman</u></a>	October 27, 2015	124 A.3d 1214 (Pa. 2015)

**Request:** Documents, including contracts, rate schedules, and correspondence in the agency’s possession, custody, or control evidencing the Provider Rates

**Holding:** Documents of dental health services subcontractors of contractors of the agency are not records of the agency because the RTKL requires that an agency have an actual contract with a third party in order to obtain records under Section 506(d)(1) of the RTKL.

Case	Date	Citation
<a href="#"><u>Staub and Citizen’s Voice v. City of Wilkes-Barre and LAG Towing, Inc.</u></a>	October 3, 2013	2013 Pa. Commw. Unpub. LEXIS 739 (Pa. Commw. Ct. 2013)

**Request:** Towing reports and receipts pertaining to city-directed towing.



**Holding:** An agency has an affirmative duty to determine if records exist within its constructive possession and does not satisfy its duties under the RTKL simply by forwarding requests to a third party and allowing that third party to control the response. Furthermore, an agency may be required to pay attorney’s fees in such a situation.

Case	Date	Citation
<a href="#"><u>Edinboro University of Pa. v. Ford</u></a>	April 21, 2011	18 A.3d 1278 (Pa. Commw. Ct. 2011)

**Request:** Contractor payroll records that the University did not maintain.

**Holding:** The fact that an agency no longer maintains or never maintained records that document a government function performed by the agency’s contractor is irrelevant; the agency still has a duty to retrieve those records under Section 506(d) of the RTKL.

Case	Date	Citation
<a href="#"><u>Equity Forward v. Pa. Department of Human Services</u></a>	May 17, 2019	2019 Pa. Commw. Unpub. LEXIS 292 (Pa. Commw. Ct. 2019)

**Request:** Agreements and expenditures relating to pregnancy and parenting support services.

**Holding:** When a third party submits an affidavit intended to show that records sought do not relate to the governmental function the third party performs, it must provide an affidavit sufficiently detailed to apprise the OOR as to what that function is and how the requested records differ. However, a third party may use a literal interpretation of the records sought.

Case	Date	Citation
<a href="#"><u>Edinboro University of Pa. v. Folletti</u></a>	June 9, 2011	2011 Pa. Commw. Unpub. LEXIS 561 (Pa. Commw. Ct. 2011)

**Request:** Records of work done by the University’s Foundation’s subcontractors.

**Holding:** Constructing student housing is not necessarily a governmental function; however, where the agreement assigns considerable control to the government entity in determining acceptable specifications, it may demonstrate governmental control for the purposes of 506(d) of the RTKL.

Case	Date	Citation
<a href="#"><u>UnitedHealthcare of Pa., Inc. v. Baron</u></a>	October 5, 2017	171 A.3d 943 (Pa. Commw. Ct. 2017)

**Request:** Copies of rates paid during 2014 to 2016 by managed care organizations to nursing homes for nursing home care of medical assistance recipients during the period when the organization is liable for payment of such costs.

**Holding:** Records of a private company are not accessible through the RTKL merely because they are in the possession of an entity regulated by the agency. Where rates paid by one private entity to another were neither regulated nor accessed by the government, they are not agency records.

Case	Date	Citation
<a href="#"><u>Real Alternatives v. Pa. Dep't of Human Servs.</u></a>	July 19, 2022	279 A.3d 96 (Pa. Commw. Ct. 2022)

**Request:** Records submitted by service providers related to pregnancy services

**Holding:** Service rate information which does not implicate the provider duties to the Department were not accessible under Section 506(d) of the RTKL because they did not directly relate to the Department's grant; however, monthly invoice information was provided because it described the government function for which the grant had been issued.

Case	Date	Citation
<a href="#"><i>Office of the Budget v. Office of Open Records</i></a>	January 6, 2011	11 A.3d 618 (Pa. Commw. Ct. 2011)

**Request:** Copies of the payroll of an independent contractor company that worked on a learning center project, which received funds from the Office of the Budget.

**Holding:** An agency’s right to review records alone does not give rise to a presumption of constructive possession of records. Constructive possession is not inferred from the mere availability of the records to an agency upon request. The test under Section 901 is whether the records document a transaction or activity of the agency. Records in the possession of a third party documenting a transaction or activity of the agency are in the agency’s constructive possession and constitute “records” under the RTKL. Section 901 prevents agencies from frustrating the purposes of the RTKL merely by placing records in the hands of third parties.

Case	Date	Citation
<a href="#"><i>West Chester University of Pa. v. Browne</i></a>	June 19, 2013	71 A.3d 1064 (Pa. Commw. Ct. 2013)

**Request:** The benefits plan offered to employees of a contractor working for the University.

**Holding:** The benefits plan is not a record under the RTKL because it does not document a transaction or activity of the agency, it was not created or maintained by the agency, and the contract between the agency and contractor does not mention an employee benefits plan and does not require the contractor to provide a copy of the plan to the agency. While the agency was required to inspect certified payrolls under the Prevailing Wage Act, those records did not contain information about the benefits plan.

Case	Date	Citation
<a href="#"><u><i>In Re: Right to Know Law Request Served on Venango County's Tourism Promotion Agency and Lead Economic Development Agency Appeal of: Michael R. Hadley</i></u></a>	January 3, 2014	83 A.3d 1101 (Pa. Commw. Ct. 2014)

**History:** Employee names and salary information of a private nonprofit corporation. Requester argued that because County Commissioners designated the nonprofit as a tourism promotion agency, its employee records were subject to the RTKL.

**Holding:** The agency had no connection to the nonprofit corporation through Section 506(d), because the agency had no control over the nonprofit corporation and had not delegated any authority. The nonprofit corporation does not perform a government function, nor does the nonprofit corporation qualify as a “local agency,” as it was only classified as an “agency” so that it might apply for and receive grants from the Commonwealth as an agent designated by the county. Finally, the purpose of the nonprofit corporation – stimulating the local economy – is not a core purpose of a government agency.

Case	Date	Citation
<a href="#"><u><i>Bagwell v. Pa. Department of Education</i></u></a>	July 19, 2013	76 A.3d 81 (Pa. Commw. Ct. 2013)

**Request:** Records received by *ex officio* member of the Penn State University Board of Trustees.

**Holding:** The OOR does not generally have jurisdiction over records of Penn State. However, the OOR had jurisdiction over the requested records because the Request was directed to an agency, which possessed the records, and Board membership by the Secretary of that agency is required by statute. The records the Secretary receives as a Board member are received by the Department pursuant to its statutory function as supporter and influencer of education at state-related institutions. Because the records are received by a Commonwealth agency to enable it to perform its statutory governmental function, they qualify as “records” under the RTKL.

Case	Date	Citation
<a href="#"><i>Buehl v. Office of Open Records</i></a>	October 14, 2010	6 A.3d 27 (Pa. Commw. Ct. 2010)

**Request:** Records showing the actual or wholesale costs the Department’s third-party contractor paid for various clothing and electronic items resold to the Department for sale to inmates through the prison commissary.

**Holding:** Records in the contractor’s possession relating to costs it paid for items did not directly relate to the performance of a governmental function – i.e. providing commissary services to inmates. What the contractor paid for the items was beyond the parameters of the contract with the Department.

Case	Date	Citation
<a href="#"><i>Giurintano v. Pa. Department of General Services</i></a>	April 25, 2011	20 A.3d 613 (Pa. Commw. Ct. 2011)

**Request:** Request seeking records relating to the agency’s contract with Language Services Associates for telephone translation services. Records requested included independent contractor agreements between the company and interpreters providing telephone translation services, and names of all interpreters who have provided services.

**Holding:** OOR properly ruled that the agency was not required to disclose the company’s independent contractor agreements with interpreters who have not actually performed translation services because those agreements were not directly related to the contract since the interpreters had not actually performed, and may never perform, translation services under the contract.

Case	Date	Citation
<a href="#"><i>Indiana University of Pa. v. Atwood</i></a>	August 10, 2011	2011 Pa. Commw. Unpub. LEXIS 668 (Pa. Commw. Ct. 2011)

**Request:** Certified payroll records of private contractors/subcontractors that performed certain construction activities to the exterior of the University’s library.

**Holding:** Because the requested records existed within the possession of the University’s third-party contractor, Section 506(d) of the RTKL required the University to produce them even where the University had discarded the copies in its actual possession pursuant to its record retention policy. Even if the agency had never maintained physical possession of the records, it would still have had constructive possession.

Case	Date	Citation
<a href="#"><u><i>Chester Community Charter School v. Hardy (Philadelphia Inquirer)</i></u></a>	February 29, 2012	38 A.3d 1079 (Pa. Commw. Ct. 2012), <i>vacated and remanded on other grounds</i> , 74 A.3d 118 (Pa. 2013)

**Request:** Salary and contract documents in the possession of a private company which had contracted with the agency to operate the school’s facilities on a day-to-day basis.

**Holding:** The mere fact that the Requester may be involved in litigation adverse to an agency is irrelevant to whether the record is accessible via the RTKL. A requester’s motive under the RTKL is irrelevant. Also, records of the school’s operation are part of the agency’s government function, and therefore may be accessed under Section 506(d) of the RTKL.

Case	Date	Citation
<a href="#"><u><i>Allegheny County and A Second Chance, Inc. v. Parsons and WTAE-TV</i></u></a>	January 14, 2013	61 A.3d 336 (Pa. Commw. Ct. 2013)

**Request:** Names, dates of birth and hire dates of the employees of a private non-profit contractor that provided social services for the agency related to the “kinship care” foster care program.

**Holding:** Names, dates of birth and employee hire dates are not a component of any of the agency’s submissions for licensure or required for performance of the contract, and therefore did not directly relate to the governmental function of providing social services to clients. “That the names, dates of birth and hire dates may pertain to the contract does not entail a direct relationship to performing the governmental function. . . . Section 506(d) does not reach all records in possession of a private contractor that relate to the governmental function; rather, the records reached are only those that relate to performance of that function.”

## Redactions

*When a record contains both public and exempt information, an agency may be required to redact the exempt information and provide that redacted record under Section 706 of the RTKL.*

Case	Date	Citation
<a href="#"><u>Fort Cherry School District v. Acton</u></a>	February 8, 2012	38 A.3d 1092 (Pa. Commw. Ct. 2012)

**Request:** Payroll/salary information and line item budgets for five specified school years in an electronic format.

**Holding:** If electronic files are stored on a database the records may be subject to the RTKL in the form they are stored. Electronic files are subject to redaction and such redaction may take place on an electronic record as it would a paper record.

Case	Date	Citation
<a href="#"><u>Southeastern Pa. Transp. Auth. v. Steinheiser</u></a>	January 5, 2024	2024 Pa. Commw. Unpub. LEXIS 13 (Pa. Commw. Ct. 2024)

**Request:** Videos of a train on which Requester was denied access

**Holding:** Although the agency demonstrated that the responsive records would present a danger to personal or public safety if provided unredacted, video redaction must be provided as an option. The case was remanded to the OOR to determine the specifics of the video redaction.

an option. The case was remanded to the OOR to determine the specifics of the video redaction.

## Filing a RTKL Appeal

These cases relate to requirements for properly appealing a denied RTKL Request. If you wish to file an appeal with the OOR, you can find more information [here](#).

Case	Date	Citation
<a href="#"><i>Office of the Governor v. Donahue and Office of Open Records</i></a>	August 18, 2014	98 A.3d 1223 (Pa. 2014)

**Request:** Various budgetary and employment records from the Office of the Governor.

**Holding:** The deadlines and timeframes of the RTKL begin when an Agency Open Records Officer (AORO) receives a request, and not upon the receipt of the request by some other agency employee. Therefore, an agency has five days from the date the AORO first receives the request to issue a response.

Case	Date	Citation
<a href="#"><i>Barnett v. Pa. Department of Public Welfare</i></a>	June 12, 2013	71 A.3d 399 (Pa. Commw. Ct. 2013)

**Request:** Documents related to services and wait times at County Assistance Offices.

**Holding:** A requester must explain why they believe a denial is deficient under Section 1101(a), but they are not required to identify and rebut individual flaws in large “omnibus response” denials in which an agency lists large number of laws and exemptions that might apply.



Case	Date	Citation
<a href="#"><i>Padgett v. Pa. State Police</i></a>	May 22, 2013	73 A.3d 644 (Pa. Commw. Ct. 2013)

**Request:** Police records, including incident reports, tickets issued, and signed forms relating to two criminal cases.

**Holding:** On appeal the requester must give a reason the requested is public record. A requester's stated motivation for making a request is irrelevant, as well as any intended use for the information.

Case	Date	Citation
<a href="#"><i>Michak v. Pa. Department of Public Welfare</i></a>	November 9, 2012	56 A.3d 925 (Pa. Commw. Ct. 2012)

**Request:** License inspection summaries issued by the Department of Public Welfare.

**Holding:** Requester may not alter the request on appeal, even where the new requested records are substantially similar to those in the request.

Case	Date	Citation
<a href="#"><i>Indiana University of Pa. v. Loomis</i></a>	June 24, 2011	23 A.3d 1126 (Pa. Commw. Ct. 2011)

**History:** Sought financial records from a state-related University's foundation. The agency agreed to provide redacted records but requested a check for \$118 in copying fees.

**Holding:** Section 506(d)(3) allows an agency to require full payment of applicable fees before receiving access to records. There is no right to appeal to the OOR until applicable copy fees have been paid in full.

Case	Date	Citation
<a href="#"><i>Crawford v. Bedford County District Attorney's Office</i></a>	July 11, 2013	2013 Pa. Commw. Unpub. LEXIS 533 (Pa. Commw. Ct. 2013)

**Request:** Investigative records related to an identified criminal prosecution from 2005.

**Holding:** The OOR properly declined to hear the appeal, as it does not have jurisdiction over appeals from local agencies related to criminal investigations, pursuant to Section 1101(a). Instead, the Requester should have appealed to the District Attorney's Office.

Case	Date	Citation
<a href="#"><i>Whitaker v. Pa. Department of Corrections</i></a>	March 8, 2013	2013 Pa. Commw. Unpub. LEXIS 181 (Pa. Commw. Ct. 2013)

**Request:** A copy of the Requester's sentencing order.

**Holding:** RTKL appeals are intended to determine whether records of an agency are public or nonpublic, and they do not serve as a collateral vehicle for attacking an inmate's sentence.

Case	Date	Citation
<a href="#"><i>McKelvey v. Pa. Office of the Attorney General</i></a>	October 13, 2017	172 A.3d 122 (Pa. Commw. Ct. 2017)

**History:** Requester sought "a copy of any report(s) generated as a result of a review of emails turned over by the OAG." This request was denied. On appeal, the issue became whether certain appendices, created after the request date, were disclosable under the same Request.

**Holding:** The appendices sought on appeal were not created until after the Request was filed, and the Request could not have encompassed those records – a RTKL request may only seek records that exist at the time of filing.

Case	Date	Citation
<a href="#"><i>Pa. Department of Corrections v. Office of Open Records</i></a>	April 6, 2011	18 A.3d 429 (Pa. Commw. Ct. 2011)

**Request:** Inmate sought to review the medical license of the sick call nurse that provided medical services to him.

**Holding:** Section 1101(a) of the RTKL requires that a requester specify the particular defects in an agency’s stated reasons for denying a RTKL request. While a requester is not required to prove anything, Section 1101 places a burden on a requester to identify flaws in an agency’s denial. An appeal that fails to sufficiently specify the reasons for appeal should be dismissed rather than addressed by OOR.

Case	Date	Citation
<a href="#"><i>Saunders v. Pa. Department of Corrections</i></a>	July 5, 2012	48 A.3d 540 (Pa. Commw. Ct. 2012)

**Request:** Job descriptions, policies and regulations from the Department of Corrections.

**Holding:** Agency’s citations to various subsections of Section 708, which merely parroted the statutory language, were sufficient to provide notice to the Requester of the grounds for the denial. In his appeal, the Requester was required per Section 1101 of the RTKL to state why the records did not fall under the asserted exemptions. A record that falls within one of the exemptions set forth in Section 708 does not constitute a “public record.”

## Notifying Third Parties

*If a third party has an interest in a record possessed by an agency, the agency may be required to notify the third party of the pending request or appeal.*

Case	Date	Citation
<a href="#"><u><i>Pa. Department of Corrections v. Maulsby</i></u></a>	July 23, 2015	121 A.3d 585 (Pa. Commw. Ct. 2015)

**Request:** An unredacted copy of the contract between the Pennsylvania Department of Corrections and Wexford Health Sources, Inc.

**Holding:** A third-party contractor must be afforded an opportunity to challenge the release of any purported confidential proprietary information on due process grounds.

Case	Date	Citation
<a href="#"><u><i>Pa. Department of Conservation &amp; Natural Resources v. Vitali</i></u></a>	July 7, 2015	2015 Pa. Commw. Unpub. LEXIS 479 (Pa. Commw. Ct. 2015)

**Request:** A state Representative sought all DCNR records from October 2010 until the date of his request relating to Governor Tom Corbett’s budget proposal to raise \$75 million dollars through nonsurface impact drilling on Commonwealth-owned land; reports, studies, memoranda, and correspondence relating to leasing additional Commonwealth land for oil or natural gas development; records showing Commonwealth land for which surface or mineral rights are under consideration for leasing for additional oil or natural gas development; records showing the mineral rights owned by the Commonwealth in state parks; records showing calculations made as to the revenue which may be generated by leasing additional Commonwealth lands for natural gas or oil development including, but not limited to, all correspondence between the Governor’s Office of the Office of the Budget and DCNR that referenced the \$75 million dollar revenue estimate; and records, including but not limited to, proposals, inquiries, or other communication made to DCNR from those that expressed interest in leasing Commonwealth lands for oil and gas development.

**Holding:** This request was specific, notwithstanding its breadth. The agency failed to give a third party notice of the appeal, so that matter was remanded to the OOR for the agency to present evidence as to applicable exemptions. The Court held that it would be unfair to penalize the third party for the agency's non-compliance.

## Proceedings Before the Office of Open Records

*Most appeals of denied RTKL Requests are heard by the Office of Open Records. This section relates to the procedures governing such appeals.*

Case	Date	Citation
<a href="#"><i>California Borough v. Rothery</i></a>	April 25, 2018	185 A.3d 456 (Pa. Commw. Ct. 2018)

**History:** The Requester sought a video from a police holding cell showing a physical altercation. The agency denied the Request and directed an appeal to the OOR; but on appeal, the agency argued that the record was a criminal investigative record, and that the OOR had no jurisdiction to hear the case. The OOR held that it did have jurisdiction and granted the appeal, which was further appealed to the local Court of Common Pleas.

**Holding:** Although it was not clear that the General Assembly intended to divest the OOR of jurisdiction when a criminal investigative claim is raised among many others, here the matter was moot because the Court of Common Pleas had jurisdiction and conducted a *de novo* proceeding. However, the video was exempt as a criminal and noncriminal investigative record because it was relied upon to fire the officer and file criminal charges against him.

## Raising Issues

*With few exceptions, the OOR only considers issues raised by one of the parties to an appeal.*

Case	Date	Citation
<a href="#"><u>McClintock v. Coatesville Area School District</u></a>	August 9, 2013	74 A.3d 378 (Pa. Commw. Ct. 2013)

**History:** The Requester sought documents relating to Graystone Academy Charter School. The agency did not respond to the Requests within five business days as required by Section 901 of the RTKL. On appeal, the Requester argued that a failure to set forth any grounds for denial should constitute a waiver on appeal.

**Holding:** An initial deemed denial by an Agency does not result in a waiver of all exemptions on appeal to the Office of Open Records, although it may be grounds for a court to levy sanctions under Sections 1304(a) and 1305(a) of the RTKL if that denial was done in bad faith.

Case	Date	Citation
<a href="#"><u>Haverstick v. Pa. State Police</u></a>	April 12, 2022	273 A.3d 593 (Pa. Commw. Ct. 2022)

**Request:** Communications between the PSP and several other entities regarding “games of skill”

**Holding:** Where a party has no meaningful opportunity to make an argument before the OOR, it may be raised for the first time before a reviewing court. Where an agency is providing a public record, it may not redact sections of that record simply because they are not responsive to the request.

Case	Date	Citation
<a href="#"><u>Chester Community Charter School v. Hardy (Philadelphia Inquirer)</u></a>	February 29, 2012	38 A.3d 1079 (Pa. Commw. Ct. 2012), <i>vacated and remanded on other grounds</i> , 74 A.3d 118 (Pa. 2013)

**Request:** Salary and contract documents in the possession of a private company which had contracted with the agency to operate the agency’s facilities on a day-to-day basis.

**Holding:** The OOR should not engage in *ex parte* communication even for entirely procedural discussions, such as an oral request for an extension of time in an appeal, because the other party cannot be assured that the communication was solely procedural. However, the Court could not conclude that the *ex parte* communication in this case denied the agency any due process because the trial court conducted a *de novo* review of the matter.

Case	Date	Citation
<a href="#"><i>Kokinda v. Lehigh County</i></a>	January 8, 2014	2014 Pa. Commw. Unpub. LEXIS 20 (Pa. Commw. Ct. 2014)

**Request:** Log book entries reflecting the dates an inmate’s attorney had visited a prison, or certification of the dates of said visits.

**Holding:** The OOR improperly dismissed the appeal for failure to include a copy of the request as required by the OOR’s Interim Guidelines; these guidelines constitute an infirm basis for dismissal because they are not regulations and have no force or effect of law. Because the OOR has a statutory obligation to consider the merits of an appeal prior to appellate review, the trial court could not consider the merits of the matter without remanding to the OOR for an initial review.

Case	Date	Citation
<a href="#"><i>Wishnefsky v. Pa. Department of Corrections</i></a>	July 29, 2016	144 A.3d 290 (Pa. Commw. Ct. 2016)

**Request:** Records showing the price paid for hernia support products and services.

**Holding:** The due process requirements of the RTKL entail notice and a chance to be heard, which may be violated if an agency raises new arguments and evidence for the first time on appeal and the Requester is not afforded an opportunity to respond to that information. This may also serve as a sound basis for reconsideration of an order by the OOR.

Case	Date	Citation
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<a href="#"><u>Haverstick v. Pa. Office of the Attorney General</u></a>	April 12, 2022	273 A.3d 600 (Pa. Commw. Ct. 2022)
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**Request:** Communications related to the Requester and any previous RTKL requests or responses.

**Holding:** An RTKL appeals officer in any agency is performing a quasi-judicial function and should avoid *ex parte* communications to ensure no impropriety occurs. It is not clear that such communications are, themselves, sufficient reason to vacate an exemption under Section 708(b)(10); however, such communications cannot be exempt if they are not deliberative in character.

## Evidentiary Issues

*An agency bears the burden of proving that a record is exempt in proceedings before the OOR. To meet this burden, an agency must generally submit competent evidence.*

Case	Date	Citation
<a href="#"><u>Office of the Governor v. Scolforo</u></a>	April 23, 2013	65 A.3d 1095 (Pa. Commw. Ct. 2013)

**Request:** A copy of the Governor’s calendar.

**Holding:** An agency may meet their burden of proof in a RTKL matter through affidavit testimony, but those affidavits must be specific enough to permit the OOR to ascertain how the records meet the criteria of the exemption being invoked by the agency. An affidavit which merely parrots the language of the RTKL or is not sufficiently specific will not meet the agency’s burden of proof.

Case	Date	Citation
<a href="#"><u>Pa. Game Commission v. Fennell</u></a>	October 26, 2016	148 A.3d 101 (Pa. Commw. Ct. 2016)

**Request:** A report and other records related to a complaint involving a hunting tree stand.

**Holding:** Where there are no disputed facts or conflicting evidence in the record on appeal, the OOR may be able to determine that records are exempt without any evidentiary submission from the agency. The Court notes that failure to make a submission before the OOR is not necessarily a default. Here, the Requester’s own appeal acknowledged all of the elements necessary for the OOR to determine that the records related to a noncriminal investigation.

Case	Date	Citation
<a href="#"><u>Pa Dep’t Labor &amp; Indus. v. O’Connor</u></a>	March 21, 2021	2021 Pa. Commw. Unpub. LEXIS 161, 252 A.3d 702

**Request:** All elevator inspection reports for modernization & construction jobs in the City of Philadelphia.

**Holding:** Because it was unclear which type of statutory inspection was at issue and because it appeared to the court that the record lacked critical information and the benefit of recent cases, the court could not determine whether an exemption applied. OOR’s Final Determination was vacated and appeal remanded back to the OOR to develop an evidentiary record.

Case	Date	Citation
<a href="#"><u><i>Pa. State Police v. Muller</i></u></a>	June 30, 2015	124 A.3d 761 (Pa. Commw. Ct. 2015)

**Request:** Records relating to a phone call about a meeting at a sportsman’s club.

**Holding:** A conclusory affidavit that provided no details and merely tracked the language of the exemption did not establish the applicability of Section 708(b)(18)(i), especially in light of language in the text of the exemption stating that it does not apply to time response logs. Furthermore, an agency cannot ignore its burden of proving an exemption before the OOR and then seek to supplement the record on appeal.

Case	Date	Citation
<a href="#"><u><i>Brown v. Pa. Department of Corrections</i></u></a>	September 1, 2017	2017 Pa. Commw. Unpub. LEXIS 653 (Pa. Commw. Ct. 2017)

**History:** Requester appealed from the agency’s refusal to grant his RTKL request due to outstanding fees for copy charges from a prior request. The agency requested that the Court revoke Requester’s *in forma pauperis* (IFP) status.

**Holding:** IFP status for RTKL appeals cannot be revoked under PLRA, because a RTKL request is not a “prison conditions litigation.” The agency’s affidavit as to the amount of fees owed was insufficiently specific because it did not identify the documents that were reproduced, as well as the number of pages included in the \$6.32 charge.

Case	Date	Citation
<a href="#"><u>Moore v. Office of Open Records</u></a>	March 25, 2010	992 A.2d 907 (Pa. Commw. Ct. 2010)

**Request:** Inmate sought a copy of his sentencing order from Pennsylvania’s Department of Corrections.

**Holding:** Under Section 705 of the RTKL, an agency is not required to create a record which does not currently exist in its custody, possession or control. The agency’s submission of an affidavit that no records exist may serve as sufficient evidentiary support.

Case	Date	Citation
<a href="#"><u>Mack v. Pa. Dep’t of Corrections</u></a>	July 26, 2023	2023 Pa. Commw. Unpub. LEXIS 393

**Request:** Financial and housing records for certain programs at a correctional institute.

**Holding:** Unclear language in the agency’s affidavit (“likely”), combined with certain other context clues, should have put the OOR on notice that the records might exist.

Case	Date	Citation
<a href="#"><u>Janesch v. Pa House of Representatives</u></a>	July 18, 2023	299 A.3d 1030 (Pa. Commw. Ct. 2023)

**Request:** Records related to the retention of outside counsel

**Holding:** The House submitted evidence which was sufficient to demonstrate that records were properly redacted for attorney-client privilege even though it did not submit a privilege log. All of the documents were produced and contained sufficient context to demonstrate the likely application of the privilege.

Case	Date	Citation
<a href="#">Coulombis v. Senate of Pennsylvania</a>	July 18, 2023	300 A.3d 1093 (Pa. Commw. Ct. 2023)

**Request:** Records related to the retention of outside counsel

**Holding:** The Senate submitted insufficient evidence to demonstrate that the records were privileged, and the privilege log submitted did not contain sufficient information; as a result, the appeals officer should have conducted a review *in camera*.

Case	Date	Citation
<a href="#">UnitedHealthcare of Pa. v. Pa. Department of Human Services</a>	May 31, 2018	2018 Pa. Commw. Unpub. LEXIS 295 (Pa. Commw. Ct. 2018)

**Request:** Records related to a reissued Request for Proposal by the agency, including proposal, evaluation, and investigation documents.

**Holding:** Without a description of the particular documents withheld, the Court was unable to assess whether all documents responsive to the Request qualified for an exemption and found it necessary to remand in part to the OOR to require the submission of an exemption log.

Case	Date	Citation
<a href="#">Paxtang Borough v. Hoyer</a>	March 3, 2017	2017 Pa. Commw. Unpub. LEXIS 145 (Pa. Commw. Ct. 2017)

**Request:** Certain pages of a police officer's employment application and emails between the officer and the police chief, including the email in which the officer resigned.

**Holding:** An affidavit describing the search for responsive records and attesting to the nonexistence of additional responsive records is sufficient to satisfy an agency's burden of proof. In the absence of evidence to the contrary, public officials are assumed to act in good faith, and unsubstantiated allegations of unlawful actions or bad faith are insufficient to overcome this presumption.



## Hearings

*The OOR has the authority to hold a hearing, but will usually decide appeals based on written submissions, affidavits and documentary evidence.*

Case	Date	Citation
<a href="#"><u>Sherry v. Radnor Township School District</u></a>	April 4, 2011	20 A.3d 51 (Pa. Commw. Ct. 2011)

**Request:** Records or reports of Academic Honor Code violations from a school district.

**Holding:** There is no right to discovery in a RTKL action. There is no right to *in camera* review or a hearing. Accordingly, affidavits may be used in the fact-finding process during OOR review. Additionally, a superseding FERPA provision precluded disclosure of certain records.

Case	Date	Citation
<a href="#"><u>Brown v. Pa. Office of Inspector General</u></a>	June 13, 2016	2016 Pa. Commw. Unpub. LEXIS 434 (Pa. Commw. Ct. 2016)

**Request:** Rules and regulations governing the duties of specified officers, as well as reports reflecting the names of staff who were sanctioned as the result of OIG investigations.

**Holding:** There is no right to a hearing under the RTKL, and the OOR’s refusal to grant one cannot be a violation of due process. A filing which does not meet the requirements of Section 1303(b) of the RTKL- a copy of the request, the agency’s response and an appeal- may be dismissed for failure to include a required document as a matter of statute.

## Appeal Deadlines

*Every part of the RTKL process is governed by statutory deadlines; failure to meet one of these deadlines can have serious consequences for appeals.*

Case	Date	Citation
<a href="#"><u><i>Pa. State System of Higher Education (PASSHE) v. Association of Pa. State College and University Faculties (APSCUF)</i></u></a>	July 6, 2016	142 A.3d 1023 (Pa. Commw. Ct. 2015)

**Request:** A wide range of financial reports and related communications from each of Pennsylvania’s universities.

**Holding:** The requests made were voluminous but sufficiently specific. However, because the agency did not have enough time to produce and review the vast number of records at issue during its tight deadlines, the Court held that the agency could apply to the OOR for additional time to meet the request deadlines by providing a valid estimate of the number of documents, the length of time required, and whether there will be an issue with providing the documents electronically if so requested. Based on that information, the OOR may grant additional time as circumstances warrant.

Case	Date	Citation
<a href="#"><u><i>Little v. Pa. Department of Corrections</i></u></a>	February 18, 2020	224 A.3d 454 (Pa. Commw. Ct. 2020)

**History:** The Request sought subpoenas for telephone calls made by the Requester, as well as a report concerning those subpoenas. The Department denied the Request under various security-related exemptions, and the Requester’s appeal was apparently filed after the statutory deadline. The OOR dismissed the appeal and denied a request to file *nunc pro tunc* because mailing delays had made compliance impossible.

**Holding:** The OOR should have granted the Requester relief *nunc pro tunc* because of the persistent mailing delays created by the inmate mailing rules. Whenever delays are created by the



prison mailing system, *nunc pro tunc* relief should be considered, and the OOR should take evidence on whether an inmate had a full chance to appeal.

Case	Date	Citation
<a href="#"><u>Thomas v. Lebanon Cnty.</u></a> <a href="#"><u>DA's Office</u></a>	December 20, 2023	2023 Pa. Commw. Unpub. LEXIS 677 (Pa. Commw. Ct. 2023)

**Request:** Records related to a grant

**Holding:** Although the court received the Requester's appeal after the time for appeal had run, it was still timely under the Prison Mailbox Rule, as evidence of record in the form of cash slips showed that it had been timely placed in the prison mailbox. Nevertheless, the trial court did not err in concluding that no responsive records exist.

## Waiver

*Although courts review the decisions of the OOR de novo, it is possible to waive an argument if that argument is not presented to the OOR.*

Case	Date	Citation
<a href="#"><i>Levy v. Senate of Pa.</i></a>	April 24, 2013	65 A.3d 361 (Pa. 2013)

**History:** The Requester sought records relating to a lawmaker’s retention of counsel, and certain records were denied or redacted pursuant to the attorney-client privilege. On appeal to the Senate’s appeals officer, for the first time, the Senate asserted other privileges. The Senate appeals officer held that those privileges had been waived.

**Holding:** Due to the short mandatory deadlines and extraordinary speed of RTKL appeals, an agency’s failure to assert all grounds for denial prior to an appeal does not constitute waiver. The attorney-client privilege does not usually apply to the mere identity of clients but may do so if that identification would disclose the legal advice given or confidential communications provided. Furthermore, descriptions of legal services provided by an attorney merit a line-by-line examination of the relevant invoices to determine if any summary would disclose the client’s motives, legal strategy or other confidential communications.

Case	Date	Citation
<a href="#"><i>Easton Area School District v. The Express Times</i></a>	April 30, 2012	2012 Pa. Commw. Unpub. LEXIS 307 (Pa. Commw. Ct. 2012)

**Request:** Copies of emails.

**Holding:** When an agency articulates certain exceptions in its initial denial letter but fails to argue those exceptions before the OOR, those exceptions may be considered waived during any subsequent judicial appeal.

## In Camera Review

*In certain cases, the OOR may order an agency to produce the contested records for the Appeals Officer to review “in camera” – that means that the Appeals Officer will look at the records themselves to determine if the agency’s exemptions apply.*

Case	Date	Citation
<a href="#"><u>Commonwealth v. Center Township</u></a>	June 24, 2014	95 A.3d 354 (Pa. Commw. Ct. 2014)

**History:** Request sought several months of invoices from the Township solicitor, which were provided in redacted form. On appeal to the OOR, the requester sought an *in camera* review. The agency denied the OOR’s request for a privilege log, and the OOR ordered an *in camera* review, but the agency refused to comply. The OOR stayed the matter and sought an order to enforce from the Commonwealth Court, which held that the OOR possessed the authority to order such a review.

**Holding:** The RTKL “through necessary implication and in appropriate circumstances, upon request by a party, grants the OOR with the authority to conduct *in camera* review of documents to ascertain whether they constitute privileged material.”

Case	Date	Citation
<a href="#"><u>Berks County v. Office of Open Records</u></a>	January 3, 2019	204 A.3d 534 (Pa. Commw. Ct. 2019)

**History:** The OOR issued a Final Determination following an *in camera* review of material involving the agency’s communications with attorneys for detained aliens. The agency sought a declaratory judgment against the OOR, arguing that the OOR lacks the power to review records *in camera* on its own motion.

**Holding:** The OOR has the power to order *in camera*, where appropriate, upon its own motion, and the agency is not entitled to limit which OOR staff view the documents. A declaratory judgment is only available against the OOR where special circumstances prevent the parties from obtaining relief through the regular administrative channels.

Case	Date	Citation
<a href="#"><u>California University of Pa. v. Schackner</u></a>	August 22, 2017	168 A.3d 413 (Pa. Commw. Ct. 2017)

**Request:** All correspondence relating to the Vulcan Parking Garage sent or received by various members of the agency for about a month.

**Holding:** Although the agency’s affidavits were too conclusory to meet either the exemptions it argued or its claims of attorney-client privilege, the context of the claim of privilege and the agency’s request for an *in camera* review demonstrate that an *in camera* review was necessary here. Most claims before the OOR can be adjudicated on the basis of affidavit testimony, but *in camera* review is a “practical necessity” in cases where the agency cannot demonstrate privilege via attestation without revealing the contents of the exempt records.

Case	Date	Citation
<a href="#"><u>Worcester Township v. Office of Open Records</u></a>	January 8, 2016	2016 Pa. Commw. LEXIS 40 (Pa. Commw. Ct. 2016)

**History:** The Court of Common Pleas reversed an OOR order that directed the Township to produce, for *in camera* inspection, copies of records the Township withheld in response to a request as well as an *in camera* inspection index, where the Township claimed the records were exempt from disclosure under the attorney-client and work-product privileges and the predecisional deliberative exception. The Court of Common Pleas also held that the OOR’s interlocutory order was an appealable collateral order, over which the trial court had jurisdiction.

**Holding:** The Commonwealth Court affirmed the trial court’s determination that OOR’s interlocutory order was an appealable collateral order. However, it reversed the trial court’s determination that OOR’s appeals officer lacked authority to request *in camera* inspection of the records at issue or an *in camera* inspection index or a “privilege log.” The Court deferred “to OOR’s appeals officer, the initial fact-finder, on this procedural issue rather than second-guess his attempt to adequately develop a record beyond the intertwined assertions of fact and law set forth in the Township’s verified memorandum of law on issues such as the predecisional deliberative exception.”

Case	Date	Citation
<a href="#"><u>Pa. State Police v. ACLU</u></a>	May 18, 2018	2018 Pa. Commw. Unpub. LEXIS 275 (Pa. Commw. Ct. 2018)

**Request:** The social media policy governing official and investigative use of social media platforms.

**Holding:** Where a sufficiently detailed affidavit establishes that records are exempt from disclosure, *in camera* review should not be used, especially when the exemption invoked is not related to the content of the record.

Case	Date	Citation
<a href="#"><u>Pa. State Police v. ACLU</u></a>	June 16, 2020	232 A.3d 654 (Pa. 2020)

**Request:** The social media policy governing official and investigative use of social media platforms.

**Holding:** The OOR and reviewing courts have the competency to review records *in camera* to test the adequacy or probity of an affidavit, and that procedure should be considered by an appeals court, even if it ultimately finds that the evidence is meaningless. The triers of fact in an RTKL case should not ignore valid affidavits but are not constrained to follow them in all cases.

Case	Date	Citation
<a href="#"><u>PA State Police v. ACLU of PA</u></a>	August 22, 2023	300 A.3d 386 (Pa. 2023)

**History:** A continuation of the above cases, following the Commonwealth Court’s remand back to the OOR to seek additional evidence which might demonstrate the exemptions cited by the agency.

**Holding:** The court abuses its discretion when it remands a case for additional fact-finding after determining that the party with the burden of proof failed to meet that burden.

## Exemptions

*Records are presumed to be public under the RTKL, but the RTKL contains thirty exemptions which may permit an agency to redact or withhold records. The exemptions are found at 65 P.S. §§ 67.708(b)(1)-(30), and are commonly referred to by number; e.g., (b)(17), the noncriminal investigation exemption. Cases relevant to most exemptions are listed below, but note that not all exemptions have been considered by an appellate court in Pennsylvania.*

### Financial Records

*“Financial record” is a term of art referring to a specific sort of record identified in the RTKL. These records deal with agency receipt or disbursement of public money, and most of the exemptions do not apply to them or apply only in a limited way.*

Case	Date	Citation
<a href="#"><u>City of Harrisburg v. Prince</u></a>	November 12, 2019	219 A.3d 602 (Pa. 2019)

**Request:** A spreadsheet showing donations to the City’s defense fund for an ordinance.

**Holding:** Section 708(b)(13) does not apply to financial records, which must be provided without redaction even if they contain donor information. The definition of an “account, voucher or contract dealing with the receipt or disbursement of funds” is a broad category which encompasses many fiscal records.

Case	Date	Citation
<a href="#"><u>Commonwealth and Pa. Department of Public Welfare v. Eiseman</u></a>	October 27, 2015	125 A.3d 19 (Pa. 2015)

**Request:** The rates paid to managed care organizations for dental services in the southeast zone, and the amounts paid by those organizations to provide dental services.

**Holding:** Financial records are broadly defined under the RTKL, and contracts controlling the disbursement of public funds, even where they are not direct conduits between a government entity and a contractor, may qualify. Furthermore, the RTKL’s trade secrets exemption supplants the general Uniform Trade Secrets Act for the purposes of RTKL request.

Case	Date	Citation
<a href="#">Allegheny Cnty. Airport Auth. v. Belko</a>	September 21, 2023	2023 Pa. Commw. Unpub. LEXIS 520

**Request:** Severance payments made by the Authority to prior employees.

**Holding:** Past public expenditures are no different than current public expenditures, such as salaries, and there is no expectation of privacy in one's receipt of public funds.

Case	Date	Citation
<a href="#">Hancock v. Magellan Behavioral Health of Pa., Inc.</a>	August 15, 2023	304 A.3d 53 (Pa. Commw. Ct. 2023)

**Request:** A complete copy of the contract between Magellan and a County government

**Holding:** The contract must be disclosed in its entirety because it constitutes a financial record; the fact that it contains material which may constitute trade secrets or proprietary information is irrelevant because the RTKL does not permit those exemptions to apply to financial records.

## 708(b)(1) – Personal Security

*This exemption covers information which could harm individuals if released.*

Case	Date	Citation
<a href="#"><i>Brown v. Pa. Department of State</i></a>	June 25, 2018	189 A.3d 1162 (Pa. Commw. Ct. 2018)

**Request:** License information, area of residence (city, county, etc.), and disciplinary history for nine different health care professionals.

**Holding:** The possibility of retaliation against prison staff is a sufficient basis for the agency to exempt information that is likely to identify the residence of medical personnel who work in prisons.

Case	Date	Citation
<a href="#"><i>State Employees' Retirement System (SERS) v. Pennsylvanians for Union Reform</i></a>	March 20, 2015	113 A.3d 9 (Pa. Commw. Ct. 2015)

**Request:** Names and home addresses of retired state employees.

**Holding:** In order to claim that records are private pursuant to the personal security exemption, the agency must show that disclosure creates a “reasonable likelihood of harm.” Additionally, there is no right to a hearing at the OOR; and agencies must notify third parties to allow participation.

Case	Date	Citation
<a href="#"><i>Pa. Department of Corrections v. Gardner</i></a>	April 27, 2012	2012 Pa. Commw. Unpub. LEXIS 300 (Pa. Commw. Ct. 2012)

**Request:** A list of all training [collectively, work-related training] given to a specified employee by the Department of Corrections for two years.



**Holding:** The declaration submitted by the agency on appeal supported a finding that the work-related training records were exempt under the personal security exemption. Citing to *Commonwealth v. Dugger*, 486 A.2d 382, 384 (1985), the Court noted that “[a] prison setting involves unique concerns and security risks.”

Case	Date	Citation
<a href="#"><i>Pa. State Troopers Association v. Scolforo</i></a>	April 11, 2012	18 A.3d 435 (Pa. Commw. Ct. 2011)

**Request:** Forms that identify supplemental employment undertaken by state troopers.

**Holding:** When establishing a danger to personal safety, an agency must offer more than speculation, even if the speculation is compelling. Furthermore, a release that would threaten personal safety may become harmless after redactions under Section 708(b)(6) are performed.

Case	Date	Citation
<a href="#"><i>Pa. Department of Revenue v. Flemming</i></a>	August 21, 2015	2015 Pa. Commw. Unpub. LEXIS 626 (Pa. Commw. Ct. 2015)

**Request:** Data on retail agents and all purchased and winning tickets by game, by day and retailer, for three years.

**Holding:** Meeting the personal safety exemption requires more than mere speculation, and the information must be connected to a person or persons – simply listing the amount of money won in past lottery events is not enough to identify a winner or endanger either players or retailers. To establish a trade secrets exemption, an agency must show that there is relevant competition, and it cannot do so by speculating that it competes with all retail markets.

Case	Date	Citation
<a href="#"><i>Governor's Office of Administration v. Purcell</i></a>	December 29, 2011	35 A.3d 811 (Pa. Commw. Ct. 2011)

**Request:** Names, job titles, hire dates, level of hire, employment status, salary, county and dates of birth for all state employees.

**Holding:** When dealing with large numbers of employees, expert testimony may be the only way to establish that a security issue applies to all of them. The exemption at Section 708(b)(1) protects both physical and personal safety, and therefore the agency does not need to establish that the harm suffered by release of records will be physical. The months and days of birth of employees may be redacted under Section 708(b)(1) because of the threat of identity theft.

Case	Date	Citation
<a href="#"><i>Delaware County v. Schaefer</i></a>	March 20, 2012	44 A.3d 89 (Pa. Commw. Ct. 2012)

**Request:** The home addresses and dates of birth of all county employees.

**Holding:** Although Section 708(b)(6) does not include the dates of birth of non-minors, the decision in *Governor's Office of Admin. v. Purcell* was correct and is upheld by the *en banc* court. However, where the County did not submit sufficient evidence to show a real risk to personal safety, the case must be remanded to develop the record.

Case	Date	Citation
<a href="#"><i>Commonwealth v. Pennsylvanians for Union Reform, Inc.</i></a>	November 20, 2014	105 A.3d 61 (Pa. Commw. Ct. 2014)

**Request:** The counties of residence for 9,444 state employees.

**Holding:** The county of residence is not a necessary part of a home address and may be provided even when a home address is otherwise exempt. Furthermore, when arguing that a safety-based exemption applies, the agency must be able to show that the knowledge of a county alone creates a risk of harm.

## 708(b)(2) – Public Safety

*This exemption protects information which would endanger the safety of the public at large.*

Case	Date	Citation
<a href="#"><u>Carey v. Pa. Department of Corrections</u></a>	July 3, 2013	2013 Pa. Commw. Unpub. LEXIS 495 (Pa. Commw. Ct. 2013) (supplemental opinion to Jan. 24, 2013 opinion)

**Request:** Records of mass transfers of inmates to Michigan.

**Holding:** Conclusory assertions, such as “the release of records will likely cause substantial risk of physical harm,” cannot form the basis for withholding records under the public security exemption of the RTKL. The public safety exemption requires specific details.

Case	Date	Citation
<a href="#"><u>Woods v. Office of Open Records</u></a>	June 10, 2010	998 A.2d 665 (Pa. Commw. Ct. 2010)

**Request:** The Board of Probation and Parole’s policy on sex offender supervision

**Holding:** The requester’s identity is not a relevant consideration, and the agency properly redacted two sections of the record sought. The Board was entitled to redact information relating to strategic procedures and practices which could enable sex offenders to resist or evade Board supervision.

Case	Date	Citation
<a href="#"><u>Gregg Township v. Grove</u></a>	June 25, 2018	2018 Pa. Commw. Unpub. LEXIS 343 (Pa. Commw. Ct. 2018)

**Request:** Footage from security cameras in the Old Gregg School, which is used for municipal offices.

**Holding:** In cases seeking video footage, the content of the video controls the application of the exemption. The affidavit in this case was silent as to what is depicted on the requested camera footage, and the affidavit referred generally to all the security cameras at the Old Gregg School and did not explain why the disclosure of specific footage from one camera would jeopardize the building's security and the public safety. Finally, the affidavit did not explain how the Township uses the cameras to enhance public and building safety and did not address whether any of the information requested could be redacted. There was no explanation of how the exemption applied in the affidavit, thus the Township did not meet its burden.

Case	Date	Citation
<a href="#"><u>Adams v. Pa. State Police</u></a>	August 31, 2012	51 A.3d 322 (Pa. Commw. Ct. 2012)

**Request:** Training material for state troopers related to confidential informants.

**Holding:** The agency proved that disclosure of these records would assist criminals in their efforts to achieve a criminal objective and would substantially alter the police's investigative process.

Case	Date	Citation
<a href="#"><u>Wishnefsky v. Department of Corrections</u></a>	August 23, 2013	2013 Pa. Commw. Unpub. LEXIS 652 (Pa. Commw. Ct. 2013)

**Request:** Policies and manuals related to the treatment of inguinal hernias.

**Holding:** Through the affidavit of a doctor, the agency met its burden of proving that disclosure of the requested records would threaten its law enforcement/public protection activities because

inmates could use the information to fake illnesses and get themselves transferred to outside medical facilities. The doctor’s affidavit was not required to include statistics or specific examples of this possibility occurring.

<b>Case</b>	<b>Date</b>	<b>Citation</b>
<a href="#">Pa. Office of Attorney General v. Mellon</a>	October 23, 2023	307 A.3d 171 (Pa. Commw. Ct. 2023)

**Request:** All investigative procedures from the Bureau of Narcotics

**Holding:** After a review *in camera*, the Court finds that the statements of policy being withheld in full consisted of general principles, policy objectives and statements of law with which the public is already familiar, and therefore it is unclear how release would affect public security. Although the Office submitted an attestation by a competent officer, his general averments did not connect the material withheld to the consequences warned of.

### **708(b)(3) – Danger to Infrastructure**

*Records which would disclose information that poses a threat to public infrastructure are exempt from disclosure.*

### **708(b)(4) – Computer Security**

*Certain records which would jeopardize computer security are exempt from disclosure.*

### **708(b)(5) – Medical History**

*The medical history of an individual is exempt from disclosure.*

## 708(b)(6) – Specified Personal Identification Information

*Certain personal information, including personal financial information, is exempt from disclosure.*

Case	Date	Citation
<a href="#"><u>Pa. State System of Higher Education (PASSHE) v. The Fairness Center</u></a>	March 30, 2016	2016 Pa. Commw. Unpub. LEXIS 245 (Pa. Commw. Ct. 2016)

**Request:** Names, email addresses, titles and institutions of employment for PASSHE faculty and coaches.

**Holding:** Email addresses that are not held out to the public or publicly accessible can be withheld under Section 708(b)(6) but email addresses that are held out to the public must be disclosed.

Case	Date	Citation
<a href="#"><u>Boyd v. Pa. Department of Corrections</u></a>	April 5, 2013	2013 Pa. Commw. Unpub. LEXIS 275 (Pa. Commw. Ct. 2013)

**Request:** The full accounting of all monies garnered from the Requester’s own institutional accounts at two separate State Correctional Institutions as the result of a misconduct while imprisoned.

**Holding:** Records containing personal financial information, regardless of the Requester’s identity, are exempt from release under the RTKL. Even when a Requester requests his/her own information, the requested records may still be exempt under the personal information exemption.

Case	Date	Citation
<a href="#"><u>Pa. Department of Public Welfare v. Clofine</u></a>	February 20, 2014	2014 Pa. Commw. Unpub. LEXIS 108 (Pa. Commw. Ct. 2014)

**Request:** The phone numbers and names of Adams County income maintenance caseworkers, as well as an email address.

**Holding:** Agency-issued email addresses and telephone numbers meet the definition of “personal identification information” so long as they are personal to the employees to which they have been assigned.

Case	Date	Citation
<a href="#"><i>Pa. Department of Conservation and Natural Resources v. Office of Open Records</i></a>	May 24, 2010	1 A.3d 929 (Pa. Commw. Ct. 2010)

**Request:** Payroll records of third-party contractors who entered into contracts with the Commonwealth for public projects.

**Holding:** Certified payroll records are financial records under the RTKL and are therefore not subject to exemptions set forth in Section 708(b) of the RTKL. However, per Section 708(c) of the RTKL, an agency may redact information from a financial record if protected under Section 708(b)(1), (2), (3), (4), (5), (6), (16), or (17). The Court found that the agencies acted reasonably by producing the payroll records in redacted form to protect the personal nature of the financial information contained in the records.

Case	Date	Citation
<a href="#"><i>Allegheny County and A Second Chance, Inc. v. Parsons and WTAE-TV</i></a>	January 14, 2013	61 A.3d 336 (Pa. Commw. Ct. 2013)

**Request:** Sought certain employee information (employee names, dates of birth and hire dates) of private non-profit contractor that provided social services for the County related to the “kinship care” foster care program.

**Holding:** Dates of birth are not categorically exempt under Section 708(b)(6)(i) as personal identification information.



Case	Date	Citation
<a href="#"><i>Pa. State Employees' Retirement System (SERS) v. Fultz</i></a>	January 9, 2015	107 A.3d 860 (Pa. Commw. Ct. 2015)

**Request:** Sought names and home addresses of certain retirees.

**Holding:** Section 708(b)(6)(i)(C) of the RTKL exempts from disclosure not only the home addresses of judges and law enforcement officers, but also other individuals who may reside at those addresses. For the purposes of Section 708(b)(1)(ii), evidence that a subset of elderly individuals are more susceptible to fraud, exploitation and theft due to cognitive impairment was insufficient to prove that disclosure of the home addresses of superannuated retirees and their beneficiaries presented a substantial and demonstrable risk to their safety as a class.

## 708(b)(7) – Employee Personnel Records

*Certain specified information related to an agency’s employees is exempt from disclosure.*

Case	Date	Citation
<a href="#"><u>Pa. Department of Labor &amp; Industry v. Rudberg</u></a>	December 8, 2011	32 A.3d 877 (Pa. Commw. Ct. 2011)

**Request:** Employment interview records and employee performance reviews (EPRs) relating to unsuccessful applicants.

**Holding:** Generally, Section 708(b)(7) only exempts those EPRs that relate to an agency employee and not those related to unsuccessful applicants for employment. However, EPRs relating to unsuccessful applicants are not public records when those applicants are agency employees.

Case	Date	Citation
<a href="#"><u>Johnson v. Pa. Convention Center Authority</u></a>	August 1, 2012	49 A.3d 920 (Pa. Commw. Ct.2012)

**Request:** Documents related to labor management agreement between the Pennsylvania Convention Center Authority and the trade unions providing services at the Convention Center. The records related to disputes between the trade unions over “work jurisdiction” and/or disputes between various trade unions and the labor supplier over work assignments, among other things.

**Holding:** Section 708(b)(7) exempts information about individual agency employees, not labor disputes. “Simply because ‘grievance material’ is mentioned in Section 708(b)(7), does not mean that all grievance materials in every situation, including a union’s ‘jurisdictional grievance’ under a labor management agreement is exempt. The Section is meant to protect information relating to individual or personal grievances. The Section is not meant to exclude information pertaining to union or policy-type grievances initiated by the union on behalf of workers which involve a grievance over basic contract principles such as seniority, vacation, etc.” Where the records requested do not disclose confidential employee records or material from a personnel file which could be used to harm the employee or cause him embarrassment or humiliation, Section 708(b)(7) does not apply.

Case	Date	Citation
<a href="#"><i>Pa. Turnpike Commission v. Murphy (Patriot News)</i></a>	December 3, 2020	

**Request:** Sought the name, positions and record of entry for all employees with E-ZPass transponders who used the turnpike.

**Holding:** Records of electronic toll collection account holder information, including vehicle movement records compiled from transactions with account holders, are exempt under 74 Pa.C.S. § 8117(d).

Case	Date	Citation
<a href="#"><i>Highlands Sch. Dist. v. Rittmeyer</i></a>	December 3, 2020	2020 Pa. Commw. LEXIS 754 (Pa. Commw. Ct. 2020)

**Request:** The name of an employee who had been subject to a disciplinary absence

**Holding:** Section 708(b)(7)(v) applies to information contained in a personnel file even if that information is freely available to the public in other contexts, where release of that information would reveal otherwise-confidential disciplinary matters. Neither the Public School Code nor the Sunshine Act mandate the public disclosure of all disciplinary records.

Case	Date	Citation
<a href="#"><i>In re Melamed</i></a>	December 19, 2022	2022 Pa. Commw. LEXIS 159 (Pa. Commw. Ct. 2022)

**Request:** Records reflecting police dismissals in 2020, including name and rank

**Holding:** Police dismissals are governed by the grievance process set forth in the Policemen and Firemen Collective Bargaining Act, 43 P.S. § 217.1. Under this system, the police department’s decision to dismiss an officer is not a “final action that ... results in demotion or discharge” for purposes of Section 708(b)(7) of the RTKL, as those actions are not final until an arbitrator rules on them.

Case	Date	Citation
<a href="#">Fruchter v. Borough of Malvern</a>	October 6, 2023	495 C.D. 2022, 496 C.D. 2022; 2023 Pa. Commw. LEXIS 156

**Request:** Documents referenced in a Retirement Agreement between the Borough and a police sergeant, who was the subject of disciplinary proceedings

**Holding:** The decision to retire is not a discharge for the purposes of the RTKL, and a retirement letter was not necessary to understand the contents of the retirement agreement.

## **708(b)(8) – Collective Bargaining Records**

*Records related to certain labor negotiation and collective bargaining are exempt from disclosure.*

## **708(b)(9) – Drafts of Policy**

*Certain draft policies and regulations are exempt from disclosure.*

## 708(b)(10) – Internal, Predecisional Deliberative Records

*A record of deliberations between agency staff may be exempt from disclosure if it is predecisional and internal.*

Case	Date	Citation
<a href="#"><u>Kaplin v. Lower Merion Township</u></a>	May 5, 2011	19 A.3d 1209 (Pa. Commw. Ct. 2011)

**Request:** Correspondence between members of the Township’s Board of Commissioners relating to certain properties, a certain conditional use application, and certain recreational trails.

**Holding:** Communications between Township staff and the Board of Commissioners regarding the logistics of issuing a decision were exempt under Section 708(b)(10)(i). The term “deliberative” refers to the nature of the communications and is not limited to a delineated deliberation period.

Case	Date	Citation
<a href="#"><u>Office of the Governor v. Davis</u></a>	August 12, 2015	122 A.3d 1185 (Pa. Commw. Ct. 2015)

**Request:** Records relating to the agency’s consideration of a certain individual for the position of Executive Director.

**Holding:** Once an agency has established that the attorney-client privilege was properly invoked, the respondent bears the burden of proving waiver. A record produced by another government agency can be internal to the agency in question for the purposes of Section 708(b)(10)(i) when the record involves inter-agency deliberation.

Case	Date	Citation
<a href="#"><i>McGowan v. Pa. Department of Environmental Protection</i></a>	September 11, 2014	103 A.3d 374 (Pa. Commw. Ct. 2014)

**Request:** Study data and correspondence related to the Department’s study of the Perkiomen Creek Water Quality Standards Review.

**Holding:** To qualify for exemption under Section 708(b)(10), a record must be internal to the agency and the agency must submit evidence of specific facts showing how the information relates to deliberation of a particular decision. However, the predicational deliberation doesn’t necessarily need to result in an official adjudication or agency decision to qualify for the exemption – it also encompasses deliberation processes that merely contemplate or propose actions.

Case	Date	Citation
<a href="#"><i>Finnerty v. Pa. Department of Community &amp; Economic Development</i></a>	April 25, 2019	2019 Pa. Commw. LEXIS 380 (Pa. Commw. Ct. 2019)

**Request:** Documents exchanged between the City of Chester, a municipal consultant, and several subcontractors providing legal and accounting services.

**Holding:** Documents exchanged between an agency, contractors, and subcontractors may still be considered internal to the agency for the purposes of Section 708(b)(10), because it best serves the public interest to encourage government agencies to retain outside experts on various topics.

Case	Date	Citation
<a href="#"><i>Payne v. Pa. Dep’t of Health</i></a>	September 15, 2020	2020 Pa. LEXIS 700 (Pa. 2020)

**Request:** Scores given by the Department to applicants for marijuana grower permits

**Holding:** Scores alone do not demonstrate any deliberation among the agency’s employees. Where an agency regularly releases a type of information, it cannot claim that information is internal and confidential in other situations.

Case	Date	Citation
<a href="#"><u>Philadelphia Public School Notebook v. Philadelphia School District</u></a>	April 26, 2012	41 A.3d 976 (Pa. Commw. Ct. 2012)

**Request:** Full texts of proposed resolutions voted on during a public meeting.

**Holding:** Once an agency presents proposed resolutions to another agency – in this case, the School Reform Commission – for vote at a public meeting, they cease to be internal to the agency, even if they are not voted upon. Furthermore, when considering whether an appeal is moot under the RTKL, the exceptions to the mootness doctrine must be considered.

Case	Date	Citation
<a href="#"><u>Pa. Department of Corrections v. Fiorillo</u></a>	May 1, 2017	2017 Pa. Commw. Unpub. LEXIS 305 (Pa. Commw. Ct. 2017)

**Request:** Communications pertaining to inmate health problems at SCI-Fayette, and the review of inmate medical records.

**Holding:** Communication sent in formulating a press strategy may be exempt under Section 708(b)(10), although purely factual information must be disclosed. Even though this discussion may come after the announcement of an agency’s official action, it is still prior to the agency’s decision on how to handle the press response to that action.

Case	Date	Citation
<a href="#"><u>Schackner v. Edinboro University</u></a>	April 27, 2020	2020 Pa. Commw. Unpub. LEXIS 208 (Pa. Commw. Ct. 2020)

**Request:** Records of the University’s attendant care and disability services, as well as the service coordinator.

**Holding:** Universities are empowered to conduct investigations under Title IX, and those investigations may be exempt under Section 708(b)(17). An agency may exchange deliberative



information with contractors and withhold those records from production under (b)(10), but it may not invoke (b)(10) to shield records of communication with those entities before they enter into a contractual relationship. Records also may not be withheld under FERPA simply because they may lead to loss of funds; the agency must establish that such a loss is likely. Finally, the OOR is not obligated to seek an exemption log from a party, although such a log may be useful in complex cases.

Case	Date	Citation
<a href="#">Public Utility Comm'n v. Nase</a>	September 8, 2023	No. 514 C.D. 2022, 2023 Pa. Commw. LEXIS 140

**Request:** Records of internal communications about a water company represented by the Requester.

**Holding:** The “notes and working papers” exemption covers materials retained solely for the convenience of an individual official, not email communications. The records are also not exempt simply because they show that deliberation occurred or privileged information was exchanged; they must actually reflect that material.

## 708(b)(11) – Confidential Proprietary Information/Trade Secrets

*Records that contain certain confidential information or trade secrets may be exempt.*

Case	Date	Citation
<a href="#"><i>Mission Pa., LLC v. McKelvey</i></a>	June 4, 2019	2019 Pa. Commw. LEXIS 528 (Pa. Commw. Ct. 2019)

**Request:** Applications for grower/processor and dispensary permits for medical marijuana.

**Holding:** When third parties seek to prove the confidential nature of submitted information or trade secret status, they must show the steps taken to keep that information confidential. Furthermore, the elements of the exemption are best established through expert testimony. Third parties which have a full opportunity to submit this information to the OOR and fail to do so do may not have a right to submit that information on appeal to the court. Finally, an agency is responsible for determining how exemptions apply to records in that agency’s possession and is not entitled to pass that job off to third parties.

Case	Date	Citation
<a href="#"><i>Thirty, Inc. v. Gil Smart &amp; Lancaster Newspapers, Inc.</i></a>	April 14, 2014	2014 Pa. Commw. Unpub. LEXIS 235 (Pa. Commw. Ct. 2014)

**Request:** Tax records for all County hotels that paid the hotel tax/excise tax from 2007 to 2011.

**Holding:** The Requester waived its objection to the third party’s standing to appeal by failing to raise the issue until its post-trial brief to the Court of Common Pleas. An objection to standing in the RTKL must be raised “at the earliest opportunity.” The tax records were partially exempt under Section 708(b)(11), as the third party proved that disclosure of certain financial information would enable competitors to access privileged information, to the detriment of the individual hotels.

Case	Date	Citation
<a href="#"><u><i>Broomall Operating Co., LP v. Murray</i></u></a>	December 14, 2018	2018 Pa. Commw. Unpub. LEXIS 661 (Pa. Commw. Ct. 2018)

**Request:** Contacts, contracts and correspondence between a nursing home operator and the Department of Health.

**Holding:** An affidavit demonstrating that a document is unique, or that it was created only for the agency's use, is not sufficient to support an exemption under Section 708(b)(11).

Case	Date	Citation
<a href="#"><u><i>Smart Comm. Holdings v. Wishnefsky</i></u></a>	July 6, 2020	240 A.3d 1014 (Pa. Commw. Ct. 2020)

**Request:** Part of a contract to provide inmate mailing services.

**Holding:** Section 708(b)(11) does not apply to financial records under the RTKL, although not all records attached to an agency contract are necessarily financial records.

Case	Date	Citation
<a href="#"><u><i>Crouthamel v. Pa. Department of Transportation</i></u></a>	April 5, 2019	2019 Pa. Commw. Unpub. LEXIS 335 (Pa. Commw. Ct. 2019)

**Request:** Records of work done on a specified project, including the gallons of tack coat and mix design.

**Holding:** The attestations of a third party establishing competition, the proprietary nature of techniques, importance to the third party's business, and steps taken to ensure confidentiality were sufficient to meet the agency's burden of proof that the technical records sought were confidential.

Case	Date	Citation
<a href="#"><u>Pa. Tpk. Comm'n v. Elec. Transaction Consultants Corp.</u></a>	April 29, 2020	230 A.3d 548 (Pa. Commw. Ct. 2020)

**Request:** Records of a bid submitted for a cashless tolling system.

**Holding:** The third party was denied due process when it was provided only a nominal amount of time to participate before the OOR, and the OOR should have granted reconsideration. However, a party may not recover attorneys' fees against the requester unless that requester's conduct is "dilatatory, obdurate, or vexatious."

## 708(b)(12) – Notes and Working Papers

*Personal notes and papers used by an agency official may be exempt.*

Case	Date	Citation
<a href="#"><u>City of Philadelphia v. Philadelphia Inquirer</u></a>	July 25, 2012	52 A.3d 456 (Pa. Commw. Ct. 2012)

**Request:** Copies of the Mayor and the City Council members' daily schedules for more than a year, including itineraries.

**Holding:** A record prepared by staff may be exempt as a note or working paper, absent wide dissemination, as the exemption specifically covers both records created by a public official and records that have been prepared for that official's sole use by another party.

## 708(b)(13) – Donation Records

*Records that reveal the identity of a donor to an agency may be exempt.*

Case	Date	Citation
<a href="#"><i>Municipality of Mt. Lebanon v. Gillen</i></a>	December 9, 2016	151 A.3d 722 (Pa. Commw. Ct. 2016)

**Request:** Communications regarding a program intended to use volunteer archers to thin deer overpopulation.

**Holding:** A donation for the purposes of Section 708(b)(13) of the RTKL does not need to be strictly monetary in nature; volunteers offering their property, time, or services may also qualify for the exemption.

Case	Date	Citation
<a href="#"><i>City of Harrisburg v. Prince</i></a>	November 12, 2019	219 A.3d 602 (Pa. 2019)

**Request:** A spreadsheet showing donations to the City’s defense fund for an ordinance.

**Holding:** Section 708(b)(13) does not apply to financial records, which must be provided without redaction even if they contain donor information. The definition of an “account, voucher or contract dealing with the receipt or disbursement of funds” is a broad category which encompasses many fiscal records.

Case	Date	Citation
<a href="#"><i>California University of Pa. v. Bradshaw</i></a>	October 13, 2021	149 CD 2018 (Pa. Commw. Ct. 2021)

**Request:** Records related to donations between Manheim Corporation and a university fund.

**Holding:** Because the law was settled that the University needed to contact its foundation to perform a search, the failure to do so constituted unreasonable bad faith.

### **708(b)(14) – Unpublished Academic Papers**

*Academic papers, including articles and lecture notes, may be exempt from disclosure prior to publication.*

### **708(b)(15) – Academic Transcripts**

*Academic transcripts and test papers may be exempt from disclosure.*

## 708(b)(16) – Criminal Investigative Records

*Certain records related to a criminal investigation are exempt from disclosure; if the matter involves a local law enforcement agency, an appeal of this exemption may be heard by a District Attorney's Office.*

Case	Date	Citation
<a href="#"><i>Arroyo v. Lancaster County District Attorney's Office</i></a>	June 29, 2011	2011 Pa. Commw. Unpub. LEXIS 513 (Pa. Commw. Ct. 2011)

**Request:** Discovery related records to a criminal case.

**Holding:** Documents created a result of the performance of an inquiry into a criminal incident are considered investigative information, which is exempt. The fact that these records are later used in a criminal prosecution does not make them public under the RTKL.

Case	Date	Citation
<a href="#"><i>Levy v. Senate of Pa.</i></a>	June 16, 2014	94 A.3d 436 (Pa. Commw. Ct. 2014)

**Request:** Bills, contracts and payment records relating to the hiring of any outside lawyer or law firm to represent a specified Senator and any current or former employee of a specified caucus beginning January 1, 2009.

**Holding:** A record may not be withheld under (b)(16) simply because it tangentially relates to a criminal investigation allegedly conducted by a different agency; an agency must demonstrate how the material itself was created or obtained pursuant to the agency's own investigation.

Case	Date	Citation
<a href="#"><i>Coley v. Philadelphia District Attorney's Office</i></a>	October 7, 2013	77 A.3d 694 (Pa. Commw. Ct. 2013)

**Request:** Copies of an immunity petition and witness statements.



**Holding:** The fact that a requester may have a right to records as *Brady* evidence has no bearing on the accessibility of those records through the RTKL. Witness statements made to law enforcement are exempt under Section 708(b)(16), as well as CHRIA, but immunity petitions may not be, depending upon the contents of the document.

Case	Date	Citation
<a href="#"><i>Pa. State Police v. Grove</i></a>	June 20, 2017	161 A.3d 877 (Pa. 2017)

**Request:** Sought, in relevant part, any video/audio recordings taken by the officers at the scene of a two-vehicle accident in Potter Township, Centre County, Pennsylvania.

**Holding:** Noncriminal investigatory information could be redacted from the vehicle’s camera records requested. Video components of State Police recordings were not criminal investigative records exempt from disclosure under Section 708(b)(16) of the RTKL or the Criminal History Record Information Act because, after determining the exemption on a case-by-case basis and redacting audio portions of the recordings, they only showed what a bystander would see. (*Note: this case preceded the enactment of 42 Pa.C.S. § 67A03, which removes police vehicle camera footage from access through the RTKL.*)

Case	Date	Citation
<a href="#"><i>Pa. State Police v. Zloczower</i></a>	October 4, 2011	2011 Pa. Commw. Unpub. LEXIS 822 (Pa. Commw. Ct. 2011)

**Request:** A variety of police records, including records of charges and arrests.

**Holding:** Filed charges are not subject to the exemption in Section 708(b)(16). For Section 708(b)(16) to apply, a record must be compiled and maintained in conjunction with an underlying investigation. Section 708(b)(16) does not apply to chronological listing of arrests including the name and address of the individual charged (commonly known as “police blotters”).

Case	Date	Citation
<a href="#"><i>Pottstown Borough v. Suber-Aponte</i></a>	January 8, 2019	2021 A.3d 173 (Pa. Commw. Ct. 2019)

**Request:** Footage from the security cameras at a police department for one day.

**Holding:** The Borough did not demonstrate that the camera footage was created for, or primarily for, the investigation of any criminal matter, nor did it provide specific information that would justify withholding the records on grounds of public safety. Although the Borough did show that some camera footage captured some criminal matters, those records could have been redacted from the remainder of the footage. (*Note: this case preceded the enactment of 42 Pa.C.S. § 67A03, which removes police vehicle camera footage from access through the RTKL.*)

Case	Date	Citation
<a href="#"><i>Cafoncelli v. Pa. State Police</i></a>	June 5, 2017	2017 Pa. Commw. Unpub. LEXIS 405 (Pa. Commw. Ct. 2017)

**Request:** Police reports, photographs, interviews or any other information that the agency might have regarding a double murder in 1966.

**Holding:** The Requester was the grandson of the victims, an investigative reporter, and correctly noted that all parties in interest to the investigation were deceased. Nevertheless, the Report contained investigative materials, notes, correspondence and reports, which, if disclosed, would reveal the institution, progress or result of a criminal investigation. The RTKL does not provide an expiration date for exemptions, and neither the OOR nor a reviewing court may override an exemption on grounds of public policy.

Case	Date	Citation
<a href="#"><i>Galloway v. Pa. Office of Attorney General</i></a>	February 12, 2013	63 A.3d 485 (Pa. Commw. Ct. 2013)

**Request:** Reimbursements made by the Attorney General’s Office concerning the relocation of a witness related to a criminal proceeding.

**Holding:** Information, such as expenditures, related to the relocation of a witness through a witness protection program of a law enforcement agency is exempt from disclosure under the RTKL, Section 708(b)(16)(vi)(E).

Case	Date	Citation
<a href="#"><i>Pa. State Police v. Kim</i></a>	November 17, 2016	150 A.3d 155 (Pa. Commw. Ct. 2016)

**Request:** Surveillance footage of a specified vehicular accident.

**Holding:** Although the video constituted routine surveillance footage recorded by a private party, the footage was seized by the police, entered into evidence and used to determine whether a criminal offense had occurred. Therefore, it was related to a criminal investigation and thus, exempt from disclosure. The video was also exempt under the Criminal History Record Information Act because it was “assembled” as part of a criminal investigation.

Case	Date	Citation
<a href="#"><i>DiMartino v. Pa. State Police</i></a>	September 19, 2011	2011 Pa. Commw. Unpub. LEXIS 787 (Pa. Commw. Ct. 2011)

**Request:** Documents related to a death, including the cause of death, toxicology, pharmacology and supplemental or amended autopsy reports.

**Holding:** A police report related to the death was exempt under both the Criminal History Records Information Act and Section 708(b)(16) because it related to an investigation of that death, and the language of the exemption is clear enough that a court does not need to try to interpret legislative intent. Furthermore, the fact that a requester is the family of a decedent is not relevant to determining their right to access information under the RTKL.

Case	Date	Citation
<a href="#"><u>Collazo v. Pa. State Police</u></a>	May 17, 2017	2017 Pa. Commw. Unpub. LEXIS 350 (Pa. Commw. Ct. 2017), <i>appeal denied</i> , 174 A.3d 564

**Request:** All surveillance footage from an incident at Mt. Airy Casino, as well as documents related to identified individuals.

**Holding:** Whether or not the video footage was produced for the purpose of investigation, it was acquired by the agency for the purpose of conducting an investigation into potential criminal conduct, and was therefore facially exempt under Section 708(b)(16).

Case	Date	Citation
Anand v. Pa. Office of Attorney General	November 20, 2023	2023 Pa. Commw. Unpub. LEXIS 628 (Pa. Commw. Ct. 2023)

**Request:** Records of investigations sent by various health companies to the Attorney General's office

**Holding:** The office demonstrated that the responsive records relate to investigations and contain various exempt materials, and the Requester failed to show that the records of third parties relate to a core governmental function and therefore become agency records simply because an agency conducts an investigation based on that company's submissions.

## 708(b)(17) – Noncriminal Investigative Records

*Certain records relating to an agency investigation which does not involve a crime are exempt from disclosure.*

Case	Date	Citation
<a href="#"><u><i>Pa. Department of Public Welfare v. Chawaga</i></u></a>	March 13, 2014	91 A.3d 257 (Pa. Commw. Ct. 2014)

**Request:** A performance audit report.

**Holding:** The report was not exempt from disclosure under Section 708(b)(17) of the RTKL because it was not a part of a “systematic or searching inquiry,” “detailed examination,” or “official probe.” To qualify for the exemption, the investigation must be done pursuant to an agency’s statutory authority and conducted as part of the agency’s regular duties.

Case	Date	Citation
<a href="#"><u><i>Mahl v. Springfield Township</i></u></a>	January 11, 2012	2012 Pa. Commw. Unpub. LEXIS 36 (Pa. Commw. Ct. 2012)

**Request:** All records relating to the Requester and a zoning issue, including communications between Township officials, neighbors, and anyone else concerning the Requester and his zoning appeal.

**Holding:** Requester was not entitled to demand the name of the complainant alleging zoning violations on the Requester’s property or the content of that complaint, and the Court concluded that the non-criminal investigation exception is not limited to active investigations.

Case	Date	Citation
<a href="#"><u><i>Port Authority of Allegheny County v. Towne</i></u></a>	September 12, 2017	174 A.3d 1167 (Pa. Commw. Ct. 2017)

**Request:** All video recordings from a bus running a specified route.

**Holding:** Where an agency creates and downloads videos for no purpose other than a noncriminal investigation, those videos are sufficiently related to the investigation to be exempt under Section 708(b)(17) even when they are ultimately inconclusive.

Case	Date	Citation
<a href="#"><i>Brown v. Pa. Office of Inspector General</i></a>	October 27, 2017	178 A.3d 975 (Pa. Commw. Ct. 2017)

**Request:** Letters reporting abuse or harassment from prisoners and documents reflecting the Inspector General’s disposition of the complaints, and a related policy.

**Holding:** Section 708(b)(17) exempts complaints made to an agency, but only when those complaints relate to a subject which the agency actually did investigate. Therefore, the agency must demonstrate that such an investigation did occur.

Case	Date	Citation
<a href="#"><i>Heavens v. Pa. Department of Environmental Protection</i></a>	April 9, 2013	65 A.3d 1069 (Pa. Commw. Ct. 2013)

**Request:** Records of an investigation into an accident at a gas well.

**Holding:** Where an agency seeks to prove that records are related to a noncriminal investigation, it is the agency’s burden to show that the records do not fall into the exception to the exemption.

Case	Date	Citation
<a href="#"><i>Lackawanna County Government Study Commission v. Scranton Times, L.P.</i></a>	November 20, 2015	2015 Pa. Commw. Unpub. LEXIS 858 (Pa. Commw. Ct. 2015)

**Request:** Unredacted copies of three emails from the materials gathered by an agency investigator.

**Holding:** The agency’s authority was to study the County’s existing home rule charter form of government, compared to alternatives, and give an evaluation of ways to improve the current

county government. The Court found no authority to conduct investigations, and therefore the study could not be exempt under Section 708(b)(17) of the RTKL.

Case	Date	Citation
<a href="#"><i>Brown v. Pa. Department of State</i></a>	September 2, 2015	123 A.3d 801 (Pa. Commw. Ct. 2015)

**Request:** Letters to physicians, disclosing the final outcome of the investigations of complaints filed with the State Board of Medicine and the State Board of Osteopathic Medicine.

**Holding:** The agency properly demonstrated that the records are exempt under Section 708(b)(17) of the RTKL where the agency was able to prove that the records sought were the products of an official investigation.

Case	Date	Citation
<a href="#"><i>Pa. Department of Environmental Protection v. Delaware Riverkeeper Network</i></a>	April 10, 2015	113 A.3d 869 (Pa. Commw. Ct. 2015)

**Request:** Sample data underlying the Technologically Enhanced Naturally Occurring Radioactive Material Study.

**Holding:** Because the agency was empowered to “monitor, control and regulate radiation sources” and it conducted a full and systematic study to produce its report, the study data underlying that report is exempt as related to a noncriminal investigation.

Case	Date	Citation
<a href="#"><i>Stein v. Plymouth Township</i></a>	April 26, 2010	994 A.2d 1179 (Pa. Commw. Ct. 2010)

**Request:** Records relating to a zoning enforcement proceeding initiated by the Township, including written correspondence, memoranda, notes and materials that would identify the name of the complainant.

**Holding:** Complaints submitted to an agency are exempt from disclosure even if those complaints are not what ultimately cause an agency to launch an official investigation. Likewise, all information found within the complaint, including the identity of the complainant, is exempt.

Case	Date	Citation
<a href="#"><i>Black v. Pa. State Police</i></a>	November 23, 2016	2016 Pa. Commw. Unpub. LEXIS 809 (Pa. Commw. Ct. 2016)

**Request:** Sought complaints regarding an identified ex-trooper.

**Holding:** An agency regulation establishing that all complaints must be investigated, along with an attestation establishing that all complaints are investigated and explaining the process of investigation, is sufficient to establish that the complaints are exempt under Section 708(b)(17) of the RTKL. The agency does not need to submit evidence as to every individual investigation.

Case	Date	Citation
<a href="#"><i>Pa. Public Utility Commission v. Gilbert and The Wall Street Journal</i></a>	March 27, 2012	40 A.3d 755 (Pa. Commw. Ct. 2012)

**Request:** Copies of certain records related to probable violations identified by the agency including a description of the probable violation, when and where it was identified, the entity faulted, descriptions concerning probable violations; a list of records related to pipeline safety that operators are required to keep and that the agency inspects; pipeline incidents reported by operators, including the name of the operator, whether there was an explosion, the dollar amount of damage, the cause of the accident, pipe specifications and the type of corrosion; copies of communications between pipeline owners and operators.

**Holding:** Records of the Public Utility Commission are not made public by action of the Public Utility Code until and unless they form the basis for an agency action. Although the agency did not submit detailed factual evidence, the records are facially exempt under Section 708(b)(17) because they seek only investigative materials which could not fall into the exception to the exemption.



Case	Date	Citation
<a href="#"><u><i>Pa. Department of Labor &amp; Industry v. Darlington</i></u></a>	June 10, 2020	234 A.3d 865 (Pa. Commw. Ct. 2020)

**Request:** Records and inspection papers relating to a boiler explosion.

**Holding:** Routine boiler inspections are not exempt under Section 708(b)(17) because the language of the statute differentiates between inspections and investigations, the statute permits inspection by certified third parties rather than agents of the Department of Labor & Industry, the agency did not show that the routine inspections involved the kind of comprehensive inspections which occurred in prior cases, and because there was no apparent public policy which justifies withholding the documents.

Case	Date	Citation
<a href="#"><u><i>Coulter v. Pa. Department of Public Welfare</i></u></a>	April 18, 2013	65 A.3d 1085 (Pa. Commw. Ct. 2013)

**Request:** Names of the investigator(s), the notes of their investigations, internal correspondence and correspondence with the Butler County Children and Youth Services, and the various versions of the reports produced as a result of these investigations.

**Holding:** The Request itself sought records produced as a result of a “noncriminal investigation.” Any responsive records were therefore exempt from disclosure under Section 708(b)(17).

Case	Date	Citation
<a href="#"><u><i>Johnson v. Pa. Convention Center Authority</i></u></a>	August 1, 2012	49 A.3d 920 (Pa. Commw. Ct.2012)

**Request:** Records related to a labor management agreement between the agency and the trade unions providing services at the convention center. The records related to disputes between the trade unions over “work jurisdiction” and disputes between various trade unions and the labor supplier over work assignments, among other things.

**Holding:** The information requested pertained to disputes between the agency and its labor unions which arose out of labor management agreements, which include specific procedures for “dispute

resolution” between the parties. As such, the agency’s “investigation” of allegations related to the agreement did not equate to the type of investigation conducted under Section 708(b)(17) of the RTKL. Notice of a dispute under the labor services agreements was not the equivalent of a “complaint submitted to an agency” under Section 708(b)(17). Such “notice” did not invoke the agency’s legislatively-granted fact-finding and investigative powers and it does not involve the agency’s “official duties.” Instead, the agency acted solely in the context of its status as a party to the agreements, and pursuant to the procedures outlined in them.

Case	Date	Citation
<a href="#"><i>Coulter v. Pa. Board of Probation &amp; Parole</i></a>	June 14, 2012	48 A.3d 516 (Pa. Commw. Ct. 2012)

**Request:** “Home plan” records that the Requester had submitted to Board agents related to investigation of residences at which she sought to live.

**Holding:** Home plans are facially records of a noncriminal investigation to determine whether a probationer or parolee’s desired residence is appropriate.

Case	Date	Citation
<a href="#"><i>Dep’t of Health v. Capouillez</i></a>	November 16, 2022	2022 Pa. Commw. Unpub. LEXIS 494 (Pa. Commw. Ct. 2022)

**Request:** Records related to compliance measures for COVID-19 in certain fitness centers

**Holding:** For a testimonial affidavit to suffice under either the Disease Protection and Control Law or Section 708(b)(17) of the RTKL, it must show both what the agency’s duties are and how the records relate to those duties in such a way that they justify exemption. It is not sufficient to simply establish the existence of an investigation and then name the documents.

## 708(b)(18) – Emergency Dispatch Records

*Certain records related to emergency dispatches are exempt from disclosure.*

Case	Date	Citation
<a href="#"><i>York County v. Czech</i></a>	February 16, 2011	13 A.3d 594 (Pa. Commw. Ct. 2011)

**Request:** Copies of “time response logs from York County 911 ... with addresses included, i.e., where the units dispatched were headed.”

**Holding:** The term “time response logs” as used in Section 708(b)(18) of the RTKL includes destination addresses or cross-street information.

## 708(b)(19) – DNA & RNA Records

*RNA and DNA records are exempt from disclosure.*

## 708(b)(20) – Autopsy Records

*Records of autopsy and postmortem examinations may be exempt.*

Case	Date	Citation
<a href="#">Hearst Television, Inc. v. Norris</a>	October 17, 2012	54 A.3d 23 (Pa. 2012)

**History:** Requester filed a request with the Coroner of Cumberland County, requesting the manner of death. The OOR held that, because the Coroner’s statute expressly provided for an annual disclosure, it conflicted with the contemporaneous disclosure procedures under the RTKL.

**Holding:** Under Section 1236.1(c) of the Coroner’s Act, 16 P.S. § 1236.1(c), and the RTKL, 65 P.S. §§ 67.101-67.3104, the Coroner’s record indicating the manner of death was immediately available to Requester. Since the Coroner’s Act provides an expedited process for individuals who seek records outside of the annual disclosure, the RTKL was not in conflict and the records could be immediately ordered available for production.

Case	Date	Citation
<a href="#">Allegheny Cnty. v. Hailer</a>	July 11, 2023	298 A.3d 476 (Pa. Commw. Ct. 2023)

**Request:** Autopsy and toxicology reports.

**Holding:** The Coroner’s Act grants access to certain records in exchange for established fees, and the 2018 update does not limit that access to “nongovernmental agencies.”

Case	Date	Citation
<a href="#">Chester County Office of the Coroner v. Keel</a>	December 7, 2023	2023 Pa. Commw. Unpub. LEXIS 659 (Pa. Commw. Ct. 2023)

**Request:** Toxicology and other reports for 17 identified decedents

**Holding:** The Coroner's Act requires that official records be provided upon payment of the specified fees, and they are not subject to exemption under Section 708(b) of the RTKL.

### **708(b)(21) – Draft Meeting Minutes**

*Draft minutes are exempt from disclosure until the agency's next regularly scheduled meeting.*

### **708(b)(22) – Property Acquisition Records**

*Certain records related to real estate, including appraisals, are exempt from disclosure.*

### **708(b)(23) – Library Records**

*Library circulation and order records of individuals and groups are exempt from disclosure.*

### **708(b)(24) – Conditional Donor Records**

*Limitations imposed by donors on library and museum materials may be exempt from disclosure.*

### **708(b)(25) – Endangered Site Records**

*The locations of archeological sites or habitats of endangered plants and animals may be exempt from disclosure.*

## 708(b)(26) – Procurement Proposals

*Proposals relating to agency procurement may be exempt.*

Case	Date	Citation
<a href="#"><i>Global Tel*Link Corp. v. Wright and Prison Legal News</i></a>	September 22, 2016	147 A.3d 978 (Pa. Commw. Ct. 2016)

**Request:** Records pertaining to contracts with outside vendors for inmate telephone service, video visitation services, electronic services, commissary services, prisoner services and book ordering services.

**Holding:** Financial information which is requested in an invitation for a bid or request for proposals to demonstrate the bidder’s economic capability is facially exempt under Section 708(b)(26). Furthermore, while those materials may be administratively appended to a contract, they are not necessarily “part” of that contract, and therefore a financial record, especially where they do not involve any agency disbursements.

Case	Date	Citation
<a href="#"><i>Greco v. Pa. Department of General Services</i></a>	July 10, 2017	2017 Pa. Commw. Unpub. LEXIS 485 (Pa. Commw. Ct. 2017)

**Request:** All bids submitted for an identified SFP and the best and final offers that were submitted.

**Holding:** In evaluating the exception to the mootness doctrine, a tribunal must determine whether an issue is capable of repetition yet evading review. Although the issue of whether a document constitutes a public record can never escape review, a document under Section 708(b)(26) can transition from exempt to public record depending on contract timing, and therefore issues involving that section may fall into the exception to the mootness doctrine.



## 708(b)(27) – Insurance Communications

*Certain communications between an agency and its insurance carrier are exempt from disclosure.*

## 708(b)(28) – Social Services Information

*Certain records relating to the provision of social services are exempt.*

Case	Date	Citation
<a href="#"><u>Commonwealth v. Simpson</u></a>	August 30, 2016	151 A.3d 678 (Pa. Commw. Ct. 2016)

**Request:** The names and addresses of individuals who filed workers compensation claims on or after January 1, 2014, date of injury, claim number, and name and address of workers’ compensation carrier.

**Holding:** The requested information is exempt under Section 708(b)(28), and therefore not a public record, which makes the requested records exempt from disclosure in their entirety. The agency is not required to redact records found to be exempt under Section 708(b)(28).

Case	Date	Citation
<a href="#"><u>Pa. Department of Human Services v. Pennsylvanians for Union Reform</u></a>	February 8, 2017	154 A.3d 431 (Pa. Commw. Ct. 2017)

**Request:** The names and addresses of all direct care workers who have been paid through a Home Care Service Program in the past three months.

**Holding:** Because the intended beneficiaries under Section 708(b)(28) are the recipients of social services, the phrase “an individual’s caregiver” applies only to the extent that a document would demonstrate the relationship between a caregiver and a recipient. However, the addresses of caregivers may still be exempt under the right to privacy.

Case	Date	Citation
<a href="#"><u>Clark v. Pa. Department of Labor &amp; Industry</u></a>	December 7, 2012	2012 Pa. Commw. Unpub. LEXIS 946 (Pa. Commw. Ct. 2012)

**Request:** Records showing the names and identities of employers and claimants in unemployment compensation hearings.

**Holding:** Both Labor & Industry regulations and the RTKL permit the Department to withhold the identities of parties to unemployment compensation proceedings. Because the records are not public, they do not require redaction.

## 708(b)(29) – Constituent Service Requests

*Certain correspondence between members of the General Assembly and constituents is exempt from disclosure.*

## 708(b)(30) – Information About Minor Children

*The names, home addresses, and dates of birth of minors are exempt from disclosure.*

## Attorney-Client Privilege

*Certain communications between an attorney and their client are exempt from disclosure.*

Case	Date	Citation
<a href="#"><u>Milford Township Board. of Supervisors v. McGogney</u></a>	January 6, 2011	13 A.3d 569 (Pa. Commw. Ct. 2011)

**Request:** Invoices which pertained to work conducted by the township’s solicitor regarding the township board’s efforts to shut down a show club.

**Holding:** Attorney-client privilege belongs to the client. The Agency Open Records Officer does not have the power to breach that privilege without the consent of the client. Here, the client is the Board, so the waiver of the attorney-client privilege may only be done by the Board.

Case	Date	Citation
<a href="#"><u>Levy v Senate of Pa.</u></a>	June 16, 2014	94 A.3d 436 (Pa. Commw. Ct. 2014)

**Request:** All bills, contracts and payment records relating to the hiring of any outside lawyer or law firm to represent a specified Senator and any current or former employee of a specified caucus beginning January 1, 2009.

**Holding:** General descriptions of legal services, as are often found on invoices, are not privileged; they simply explain the services provided and justify the charges rendered.

Case	Date	Citation
<a href="#"><u>Bagwell v. Pa. Department of Education</u></a>	October 31, 2014	103 A.3d 409 (Pa. Commw. Ct. 2014)

**Request:** Records sent to the Department Secretary and his assistant by counsel and board members of Pennsylvania State University.

**Holding:** Documents containing attorneys’ mental impressions are protected by the attorney-work product doctrine, regardless of whether they are made in the context of litigation. Pennsylvania courts have not adopted subject matter waiver, and where it is recognized, it only applies where the parties are adversaries in litigation. The burden of proof is on the party alleging waiver.

Case	Date	Citation
<a href="#"><u>City of Pittsburgh v. Silver</u></a>	August 16, 2012	50 A.3d 296 (Pa. Commw. Ct. 2012)

**Request:** The contents of an assistant solicitor’s file in a specified settlement negotiation.

**Holding:** Because the Supreme Court of Pennsylvania has exclusive jurisdiction to regulate an attorney’s representation of clients, the RTKL does not give the OOR jurisdiction to release records related to a solicitor’s representation in a settlement.

Case	Date	Citation
<a href="#"><u>Pa. Public Utility Commission v. Sunrise Energy, LLC</u></a>	January 12, 2018	177 A.3d 438 (Pa. Commw. Ct. 2018)

**Request:** All emails and correspondence between the agency staff and First Energy Corporation (First Energy) regarding the case of *Sunrise Energy, LLC v. First Energy Corporation* (Pa. Commw., No. 1282 C.D. 2015, October 14, 2016), from 2015-2016.

**Holding:** The agency argued that the emails and correspondence were protected because they related to the agency’s submission of an amicus brief on behalf of First Energy, and that they were prepared in anticipation of litigation. Further, the agency contended that the Requester lacked standing to bring the appeal because Sunrise was not named in the original request, and that the issue should be resolved before the Court of Common Pleas as a discovery issue, rather than by the OOR. The Court remanded the appeal to the OOR to conduct an *in camera* review of the records to determine whether the agency or First Energy were the privilege holders, and the Court found that standing existed because the requester indicated on appeal that his request was made on the behalf of the Appellee.

Case	Date	Citation
<a href="#"><u>Commonwealth v. Center Township</u></a>	June 24, 2014	95 A.3d 354 (Pa. Commw. Ct. 2014)

**History:** The OOR directed the agency to provide a privilege log identifying each record withheld and explaining why a privilege applies to each redacted entry. The agency did not provide the OOR with a privilege log, instead asserting that the OOR is without authority or jurisdiction to make such a demand. Upon reviewing the record, the OOR determined that it could not properly adjudicate the dispute without assessing the records because there was no substantial evidence concerning the contents and description of the litigation services. The OOR granted Requester’s request for *in camera* review and directed the agency to produce for *in camera* inspection unredacted copies of all responsive records that the Township withheld. The agency did not comply, asserting that the OOR lacks statutory authority to compel and undertake an *in camera* review. The agency also argued that the OOR does not possess subject matter jurisdiction to review the documents and determine whether they are covered by the asserted privileges.

**Holding:** The OOR possesses subject matter jurisdiction to apply the provisions of the RTKL and decide whether a request falls within the ambit of the attorney-client privilege, the work-product doctrine, and/or the ethics-based rule of confidentiality. Further, the OOR’s power to conduct and require an *in camera* review is implied in the RTKL.

Case	Date	Citation
<a href="#"><u>Rittenhouse v. Lower Milford Township Board of Supervisors</u></a>	April 5, 2012	41 A.3d 975, 2012 Pa. Commw. Unpub. LEXIS 248 (Pa. Commw. Ct. 2012)

**Request:** Records related to asbestos at a proposed quarry.

**Holding:** Work product privilege extends to the product of an attorney’s representative, which in this case was a report prepared by the Township’s consultant hydrogeologist for litigation. Disclosure of a document protected by a privilege, which is not a public record, does not convert the document into a public record.



Case	Date	Citation
<a href="#"><i>Pa. Department of Education v. Bagwell</i></a>	April 16, 2015	114 A.3d 1113 (Pa. Commw. Ct. 2015)

**Request:** Emails between counsel and the former Secretary of the Department.

**Holding:** The certified record must include all evidence accepted and considered by the appeals officer. *In camera* review is insufficient to evaluate a waiver challenge involving the attorney-client privilege; the challenger must be afforded an opportunity to present supporting evidence, especially where proof has been proffered.

Case	Date	Citation
<a href="#"><i>Dages v. Carbon County</i></a>	March 20, 2012	44 A.3d 89 (Pa. Commw. Ct. 2012)

**Request:** “Case law” referred to by a county commissioner as authorizing an economic development project.

**Holding:** A claim of attorney-client or attorney work-product privilege may be demonstrated through affidavit testimony and covers both a client’s request for legal advice and an attorney’s provision of the same.

## Confidentiality Laws

*Other state and federal laws, or agency regulations, may render a record exempt from disclosure.*

### Other Laws Generally

Case	Date	Citation
<a href="#"><u><i>Pa. Department of Labor &amp; Industry v. Heltzel</i></u></a>	May 5, 2014	90 A.3d 823 (Pa. Commw. Ct. 2014)

**Request:** Pennsylvania's Tier II hazardous chemicals inventory.

**Holding:** The OOR has the authority to interpret state and federal statutes that involve public access to agency information as part of the appeals process, because it must determine whether other laws block or effectuate access to records under the RTKL.

Case	Date	Citation
<a href="#"><u><i>Pennsylvanians for Union Reform v. Pa. Department of State</i></u></a>	May 23, 2016	138 A.3d 727 (Pa. Commw. Ct. 2016)

**Request:** Voter registration and candidate information of individuals with specified first names, including address and date of birth.

**Holding:** The Voter Registration Act, 25 Pa.C.S. §§ 1101-1906, and the regulations of the Department of State governed the accessibility of the voter registration information requested, and the RTKL did not apply since access to the records was otherwise provided by law.

Case	Date	Citation
<a href="#"><i>Pa. Department of Health v. McKelvey</i></a>	September 27, 2018	2018 Pa. Commw. Unpub. LEXIS 520 (Pa. Commw. Ct. 2018)

**Request:** The names, job titles and departments of the panel that is reviewing and scoring applications for grower/processor and dispensary permits under the medical marijuana program.

**Holding:** The agency denied the Request, stating that the requested information is exempt from disclosure under Pennsylvania regulations governing the medical marijuana program and that disclosure would threaten the personal security of the panel members. The Commonwealth Court held (1) that the agency regulations should be interpreted as written when the request was made, when the regulations did not affect procedural matters and were not expressly retroactive, and (2) the agency did not set forth clear evidence that the sought material would be exempt under Section 708(b)(1). The agency’s interpretation of its regulation was not entitled to deference, and the regulation did not prohibit public disclosure under the RTKL, it merely prohibited disclosure to applicants in the agency’s program.

Case	Date	Citation
<a href="#"><i>Feldman v. Pa. Commission on Crime &amp; Delinquency</i></a>	April 18, 2019	208 A.3d 167 (Pa. Commw. Ct. 2019)

**Request:** Lists of individuals whose applications for victim compensation benefits were denied.

**Holding:** Section 709 of the Crime Victims Act prohibits disclosure of any information obtained by the Commission on Crime & Delinquency during the processing of a claim. As such, no data from those claims may be provided in any form, even in aggregate.

Case	Date	Citation
<a href="#"><i>Pa. Pub. Util. Comm’n. v. Friedman</i></a>	April 18, 2019	2020 Pa. Commw. LEXIS 788 (Pa. Commw. Ct.)

**Request:** Calculations showing blast radius for HVL pipelines.

**Holding:** When an agency denies a request for records under the Confidential Security Information Act, the requester must challenge the designation of records as CSI with the agency administering the statute rather than the OOR.

Case	Date	Citation
<a href="#"><u><i>Pennsylvanians for Union Reform v. Governor's Office of Administration</i></u></a>	December 18, 2015	129 A.3d 1246 (Pa. Commw. Ct. 2015)

**Request:** Records of all union political action committee contributions processed by agency payroll deduction for three months for thirty employees.

**Holding:** An agency is permitted to demonstrate that a record is exempt from disclosure as a matter of law without first confirming the existence of that record where information regarding the existence of the record is itself exempt. Furthermore, the Election Code and the First Amendment to the United States Constitution protect an individual's rights to political association and prevent the government from disclosing some political donations.

Case	Date	Citation
<a href="#"><u><i>Ali v. Philadelphia City Planning Commission</i></u></a>	October 1, 2015	125 A.3d 92 (Pa. Commw. Ct. 2015)

**History:** The OOR refused to order the Philadelphia City Planning Commission to provide the requester with unredacted copies of records which contained information that the Commission deemed protected under Section 106 of the federal Copyright Act.

**Holding:** Federal copyright law does not exempt records but may limit distribution. The Copyright Act neither 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. When an agency determines that material is copyrighted, the agency is entitled to limit a requester's review to inspection and is not required to seek out the copyright owner's approval for duplication or to conduct a fair use analysis.

Case	Date	Citation
<a href="#"><u>Perez v. Stedman</u></a>	July 12, 2017	2017 Pa. Commw. Unpub. LEXIS 501 (Pa. Commw. Ct. 2017)

**Request:** Tapes and tape-recorded conversations connected to two criminal cases brought against the requester.

**Holding:** A law enforcement agency does not waive an exemption under the RTKL by using records as evidence in a criminal trial where disclosure of the records is prohibited by law. Furthermore, while agencies may waive exemptions under the RTKL and provide records, they cannot waive confidentiality statutes.

Case	Date	Citation
<a href="#"><u>Pa. Public Utility Commission v. Seder</u></a>	May 25, 2016	139 A.3d 165 (Pa. 2016)

**Request:** A “tip letter” and investigative file associated with a settlement agreement between PPL and the agency.

**Holding:** Section 335(d) of the Public Utility Code requires the agency to make public the letter and the file because they were documents that were relied upon by the agency in beginning an investigation and in taking official action against a utility.

Case	Date	Citation
<a href="#"><u>Pa. Liquor Control Bd. v. Burns</u></a>	June 16, 2020	229 A.3d 51 (Pa. Commw. Ct. 2016)

**Request:** Records reflecting the total number of licenses for auction per county.

**Holding:** The Liquor Code does not exempt the number of licenses; the fact that it once made them expressly public and no longer does is not sufficient to manifest an intention by the General Assembly that they be exempt under the RTKL. Furthermore, the Board did not show that they were subject to any of the RTKL’s exemptions.

Case	Date	Citation
<a href="#"><i>Greenberger v. Pa. Insurance Department</i></a>	March 7, 2012	39 A.3d 625 (Pa. Commw. Ct. 2012)

**Request:** Documents related to “Reinsurance Offset Guidelines” issued by the Pennsylvania Insurance Department concerning the liquidation of Reliance Insurance Company.

**Holding:** The RTKL is inapplicable to rehabilitation or liquidation proceedings because they are solely within the control of the court under the Insurance Act. The court and not the OOR had jurisdiction over the requested documents. The OOR’s decision was vacated for lack of jurisdiction.

Case	Date	Citation
<a href="#"><i>Barosh v. City of Philadelphia</i></a>	May 9, 2018	2018 Pa. Commw. Unpub. LEXIS 259 (Pa. Commw. Ct. 2018)

**History:** Requester filed 11 requests directed to the City’s fire department seeking 33 separate items all related to events that led to his convictions for arson and insurance fraud.

**Holding:** A previously entered protective order may act to prevent disclosure of public records responsive to a subsequent RTKL request. Where a court of competent jurisdiction enters such an order, even in collateral litigation, the OOR should deny a subsequent appeal.

Case	Date	Citation
<a href="#"><i>Danvers v. Pa. Department of Aging</i></a>	July 18, 2013	2013 Pa. Commw. Unpub. LEXIS 564 (Pa. Commw. Ct. 2013)

**Request:** Records related to complaints filed about the care of the requester’s mother.

**Holding:** For RTKL purposes, the identity of the requester is irrelevant; the Protective Services Act renders confidential reports and information derived from investigations.

Case	Date	Citation
<a href="#"><i>Pa. Department of Transportation v. Walsh/Granite JV</i></a>	October 31, 2016	149 A.3d 425 (Pa. Commw. Ct. 2016)

**Request:** Bids submitted to PennDOT for maintenance and repair of structurally deficient bridges.

**Holding:** The Public-Private Transportation Partnership Law (“P3 Law”) only specifically provides for the disclosure of successful proposals; because the P3 Law subsequently lists exemptions, it follows that unsuccessful proposals are exempt from disclosure. The P3 Law presents an alternative to the procurement process; likewise, public access to related records is not governed by the RTKL.

Case	Date	Citation
<a href="#"><i>Smith v. Pa. Department of Environmental Protection</i></a>	May 8, 2017	161 A.3d 1049 (Pa. Commw. Ct. 2017)

**Request:** Records relating to a business that performs drilling diagnostics throughout the state.

**Holding:** Pursuant to Department regulations promulgated under the Radiation Protection Act, investigative reports “pertaining to safety and health in industrial plants” must be disclosed, although trade secrets and confidential, proprietary information can be redacted. Inspections of well sites qualify as reports that must be disclosed. However, records related to the Department’s inspection of the business in question are related to a noncriminal investigation and are exempt.

Case	Date	Citation
<a href="#"><i>Davis v. Pa. State Emps. Ret. Sys.</i></a>	October 27, 2022	284 A.3d 1307 (Pa. Commw. Ct. 2022)

**Request:** Records involving a decision to invest in several real estate funds

**Holding:** Records relating to “alternate investments” under the Retirement Code may be exempt from disclosure if they are (1) subject to a confidentiality agreement or, (2) disclosure would cause

substantial public harm, or (3) disclosure would detrimentally affect the value of the investment, but only until release of such documents would no longer cause the associated harms. The elements of this test may be demonstrated by a sufficiently detailed affidavit.

Case	Date	Citation
<a href="#">Energy Transfer v. Moss</a>	January 20, 2023	2023 Pa. Commw. LEXIS 5 (Pa. Commw. Ct. 2023)

**Request:** Communications related to emergency planning for gas pipelines

**Holding:** Whether the records designated as “confidential security information” by Energy Transfer qualified under the CSI act is a determination for the Public Utility Commission, and the OOR has no jurisdiction to decide it. Furthermore, the filing of a formal complaint by the Commission’s Bureau of Enforcement is not a final decision within the meaning of the Public Utility Code- rather, that requires a decision, settlement, or official action under the Sunshine Act.

Case	Date	Citation
<a href="#">Swoboda v. Pa. Dep’t of State</a>	October 20, 2023	304 A.3d 105 (Pa. Commw. Ct. 2023)

**Request:** A list of registered voters without the requirements imposed under the Voter Registration Act’s access provisions

**Holding:** Because the Voter Registration Act sets out an exclusive method for obtaining certain voter registration information, it preempts the RTKL and petitioners could not obtain that information without agreeing to avoid republication.

Case	Date	Citation
<a href="#">Honey v. Lycoming Cnty. Office of Voter Services</a>	March 4, 2024	2024 Pa. Commw. LEXIS 71 (Pa. Commw. Ct. 2024)

**Request:** Cast Vote Record files for the 2020 general election



**Holding:** CVR files constitute the “contents of a ballot box” under the Election Code and are, therefore, unavailable through a RTKL request.

## Criminal History Record Information Act (“CHRIA”)

*CHRIA exempts records that relate to an individual’s criminal history. This law has significant overlap with the exemption at Section 708(b)(16) of the RTKL, and may also be decided by appeals officers for a District Attorney’s Office in some cases.*

Case	Date	Citation
<a href="#"><u>Pa. State Police v. Zloczower</u></a>	October 4, 2011	2011 Pa. Commw. Unpub. LEXIS 822 (Pa. Commw. Ct. 2011)

**Request:** A wide variety of police records.

**Holding:** Neither the RTKL nor CHRIA protect press releases, police blotters or court dockets (filed charges) from disclosure. Further, an agency may not restrict access to public records requested under the RTKL by asserting that the records are subject to disclosure only under CHRIA, as the RTKL offers an alternative to CHRIA to obtain public records.

Case	Date	Citation
<a href="#"><u>Barros v. City of Allentown</u></a>	July 5, 2012	2012 Pa. Commw. Unpub. LEXIS 466 (Pa. Commw. Ct. 2012)

**History:** Motion to dismiss on *lis pendens*, improper parties to CHRIA/RTKL action.

**Holding:** A District Attorney is an adjudicator, but not a keeper of criminal records. Therefore, he is not a proper party to a RTKL action. The city police department is a local agency charged with maintaining criminal records. Accordingly, it is a proper party to a RTKL action. *Lis pendens* protects a defendant from being forced to defend multiple suits on the same cause of action at the same time. When a Petitioner claims he has a right to access these records under the RTKL, whereas in the earlier proceeding he sought access only under the CHRIA, *lis pendens* does not apply.

Case	Date	Citation
<a href="#"><u>In re Mezzacappa</u></a>	April 6, 2023	297 A.3d 446 (Pa. Commw. Ct. 2023)

**Request:** Mug shots taken of inmates during a 3-month period from the county prison

**Holding:** CHRIA and Section 708(b)(16) do not shield materials by implication, or create a blanket protection for all records in which police take any interest; in the absence of a relationship to a specific investigation, a record is not exempt. Additionally, the RTKL does not impose a duty on a requester to act in good faith before an agency is required to reciprocate.

Case	Date	Citation
<a href="#">Segelbaum v. Pa. Office of the Attorney General</a>	August 17, 2023	304 A.3d 56 (Pa. Commw. Ct. 2023)

**Request:** A timeline sent by the AG’s office to a District Attorney as part of a complaint

**Holding:** The record sought constituted part of an investigation shared between two criminal justice agencies and was exempt under CHRIA.

## Family Education Rights and Privacy Act of 1974 (“FERPA”)

*FERPA exempts certain education records from disclosure.*

Case	Date	Citation
<a href="#"><u><i>Easton Area Sch. Dist. v. Miller</i></u></a>	June 18, 2020	232 A.3d 716 (Pa. 2020)

**Request:** School records, including a school bus video showing a teacher disciplining a student.

**Holding:** School videos may be subject to restriction under both FERPA and the state constitutional right to privacy, and therefore the agency should perform a balancing test and ensure that the rights of students are represented before providing any records. However, records otherwise exempt under FERPA may be provided without any constitutional issue if the images of students are redacted from the video.

Case	Date	Citation
<a href="#"><u><i>Central Dauphin School District v. Hawkins</i></u></a>	December 10, 2018	199 A.3d 1005 (Pa. Commw. Ct. 2018)

**Request:** Footage of a bus video showing a confrontation between a parent and a student.

**Holding:** Where a video of a student reveals nothing about a student-specific file, is not part of any student discipline and is not part of the records traditionally considered education records, it is not protected by FERPA. Furthermore, where school bus cameras are used for many purposes other than conducting noncriminal investigations, footage taken from the cameras is not necessarily exempt under Section 708(b)(17).

Case	Date	Citation
<a href="#"><u><i>Sherry v. Radnor Township School District</i></u></a>	April 4, 2011	20 A.3d 515 (Pa. Commw. Ct. 2011)

**Request:** Records or reports of Academic Honor Code violations from a school district.

**Holding:** Student disciplinary records are “educational records,” and may not be disclosed without the written consent of the student’s parent, pursuant to Section 1232g(b)(1) of FERPA.

Case	Date	Citation
<a href="#"><u>Jessica Calefati and the Philadelphia Inquirer, v. School District of Philadelphia</u></a>	January 12, 2022	2022 Pa. Commw. Unpub. Lexis 17, 2022 WL 108455

**Request:** Records student-level attendance with student identifiers redacted.

**Holding:** FERPA does not categorically bar public disclosure of education records and an Agency may not deny access to a record if the information which is subject to access is able to be redacted.

Case	Date	Citation
<a href="#"><u>Central Dauphin Sch. Dist. v. Hawkins</u></a>	December 21, 2022	286 A.3d 726 (Pa 2022)

**Request:** Video of an interaction between a parent and a student on a school bus

**Holding:** Information which personally identifies students is exempt under FERPA; however, the agency has a duty to redact that information if possible. The agency is responsible both for asserting that lack of capacity and carrying the burden of persuasion to the tribunal. Although a heightened expectation of privacy or a story’s presence in the news may factor into this analysis, the tribunal must also consider whether the individuals in the case are still of school age.

## Probation and Parole Records

*The regulations of the Pennsylvania Board of Probation and Parole exempt from disclosure most probation and parole-related materials.*

Case	Date	Citation
<a href="#"><u>Jones v. Office of Open Records</u></a>	March 31, 2010	993 A.2d 339 (Pa. Commw. Ct. 2010)

**Request:** The written parole recommendations made by the sentencing judge and prosecuting attorney in his parole hearing.

**Holding:** Under 37 Pa. Code §61.2, any record possessed by the Board of Probation & Parole which relates to matters concerning “a probationer or parolee are private, confidential and privileged.” Furthermore, this regulation applies equally to those who have received probation or parole and those who sought and were denied it.

## Vehicle Code

*Certain records involving driving and vehicles are exempt from disclosure.*

Case	Date	Citation
<a href="#"><u><i>Pa. Department of Transportation v. Office of Open Records</i></u></a>	November 1, 2010	7 A.3d 329 (Pa. Commw. Ct. 2010)

**Request:** Sight distance measurements performed at an intersection

**Holding:** Under 75 Pa.C.S. § 3754, “in-depth accident investigations and safety studies” performed by PennDOT and the Pennsylvania State Police are confidential, as are records used in their preparation. However, the agency must demonstrate that the records sought either were or are being used to prepare such a study.

Case	Date	Citation
<a href="#"><u><i>Pa. Turnpike Commission v. Murphy (Patriot News)</i></u></a>	July 19, 2011	25 A.3d 1294 (Pa. Commw. Ct. 2011)

**Request:** Sought the name, positions and record of entry for all employees with E-ZPass transponders who used the turnpike.

**Holding:** Records of electronic toll collection account holder information, including vehicle movement records compiled from transactions with account holders, are exempt under 74 Pa.C.S. § 8117(d).

Case	Date	Citation
<a href="#"><u><i>Advancement Project and Marian Schneider v. Pa. Department of Transportation</i></u></a>	January 14, 2013	60 A.3d 891 (Pa. Commw. Ct. 2013)

**Request:** Sought the name, address, date of birth and social security number of each person issued a driver’s license or non-driver photo identification card, by PennDOT, for a four-year period.

**Holding:** Name, address, date of birth and social security number of each person issued a driver's license or non-driver photo identification card are confidential under Section 6114 the Vehicle Code and the Federal Privacy Act.

Case	Date	Citation
<a href="#"><u><i>Coulter v. Pa. Board of Probation &amp; Parole</i></u></a>	June 14, 2012	48 A.3d 516 (Pa. Commw. Ct. 2012)

**Request:** Parolee sought “home plan” records that she had submitted to Board agents related to investigation of residences at which she sought to live.

**Holding:** Estoppel as a doctrine does not apply to RTKL requests because whether a document is a public document or exempt, that character does not change just because the agency releases some information contained in the document. Even though the Requester sought her own Home Plans, the public status of a record does not depend on the identity of a requester.



## Internal Revenue Code

*Certain tax records are exempt from disclosure.*

Case	Date	Citation
<a href="#"><i>Pa. Office of the Budget v. Campbell</i></a>	August 4, 2011	25 A.3d 1318 (Pa. Commw. Ct. 2011)

**Request:** Copies of the current and former OOR employee W-2 forms, subject to redaction.

**Holding:** W-2 forms were within the definitions of “return” and “return information” under 26 U.S.C.S. § 6103(b), such that they were confidential and not subject to disclosure under § 6103(a). Therefore, W-2 forms must be withheld entirely.

Case	Date	Citation
<a href="#"><i>Fort Cherry School District v. Coppola</i></a>	February 23, 2012	37 A.3d 1259 (Pa. Commw. Ct. 2013)

**Request:** W-2 and 1099 forms submitted by the District for two years regarding four employees.

**Holding:** 1099 forms were within the definitions of “return” and “return information” under 26 U.S.C.S. § 6103(b), such that they were confidential and not subject to disclosure under § 6103(a). Furthermore, the OOR erred in addressing issue of the 1099 forms, because it was not properly raised by the Requester on appeal.

## Constitutional Right to Privacy

*The Pennsylvania State Constitution guarantees a right to “reputation,” which requires agencies to perform a balancing test before producing certain information pertaining to individuals.*

Case	Date	Citation
<a href="#"><i>Pa. State Education Association (PSEA) v. Office of Open Records</i></a>	October 18, 2016	148 A.3d 142 (Pa. 2016)

**History:** This matter began with a declaratory judgment action to stop the production of the home addresses of school employees in RTKL cases. After a complex procedural history, the lower courts and OOR determined that there was no state constitutional right to privacy in RTKL cases. On a final appeal to the Pennsylvania Supreme Court, PSEA argued that such a right did exist, and that the RTKL was constitutionally deficient in providing the holders of that right an opportunity to assert it. The Court agreed, finding that a right to privacy exists in Article 1, Section 1 of the State Constitution, and that it could be invoked to bar the release of certain home addresses.

**Holding:** The Pennsylvania Supreme Court held that the right to privacy contained in Article 1, Section 1 of the State Constitution requires that a balancing test be performed whenever an agency is asked to produce records in which people have a privacy interest. This balancing test requires that the agency and any tribunal deciding the case compare the public interest in disclosure set forth by the requester and balance it against the interests of the third parties. Furthermore, the court found that such an interest exists in the home addresses of public employees, and that those addresses should not be released absent a compelling reason.

Case	Date	Citation
<a href="#"><i>State Employees Retirement System (SERS) v. Campbell</i></a>	March 3, 2017	155 A.3d 1153 (Pa. Commw. 2017)

**Request:** A copy of the names and addresses of all retired SERS members with mailing addresses in particular European countries.

**Holding:** Home address information implicated the right to privacy under Pa. Const. Art. I, § 1, therefore a balancing test was required under the RTKL to determine whether the right to privacy outweighed the public’s interest in dissemination.

Case	Date	Citation
<a href="#"><u><i>Chester Housing Authority v. Polaha</i></u></a>	November 21, 2017	173 A.3d 1240 (Pa. Commw. Ct. 2017)

**Request:** A list of all properties in a township where the tenant receives HCVP assistance, and a list including the address of the property and name of the property owner.

**Holding:** The vouchers for HCVP assistance do not expressly waive the right to privacy of the tenants of the homes, and therefore the Court must balance the tenants’ right to privacy against the Requester’s interest in the records. The Court found that the agency’s compromise, where it provided a less-specific list of addresses, was sufficient to satisfy the Requester’s interest and therefore a greater government intrusion would be unjustified.

Case	Date	Citation
<a href="#"><u><i>Butler Area School District v. Pennsylvanians for Union Reform</i></u></a>	November 2, 2017	172 A.3d 1173 (Pa. Commw. Ct. 2017)

**Request:** School District Superintendent’s home address and an unredacted copy of the most recent Property List for the School District.

**Holding:** Under the RTKL, property addresses contained in property tax assessment records are public under 53 Pa.C.S. § 8841(d) and case law, as it was not sufficiently personal in nature to trigger a balancing test under Pa. Const. art. I, § 1.

Case	Date	Citation
<a href="#"><u><i>State Employees’ Retirement System (SERS) v. Fultz</i></u></a>	March 29, 2017	2017 Pa. Commw. Unpub. LEXIS 220 (Pa. Commw. Ct. 2017)

**Request:** Home addresses of members of the state retirement system.

**Holding:** Although a court has the ability to take new evidence and make new findings on appeal, the proper procedure is to remand to the OOR to conduct the balancing test in the first instance.

Case	Date	Citation
<a href="#"><u>Governor’s Office of Administration v. Campbell</u></a>	January 24, 2019	202 A.3d 890 (Pa. Commw. Ct. 2019)

**Request:** The full names, dates of birth, job titles and counties of residence for all employees.

**Holding:** The OOR was required to perform the balancing test before releasing personal information, even as de-identified as county of residence alone. The court, performing the balancing test, determined that there was no public interest in release of county information.

Case	Date	Citation
<a href="#"><u>Pa. Social Services Union v. Commonwealth of PA</u></a>	December 14, 2012	59 A.3d 1136 (Pa. Commw. Ct. 2012)

**History:** Members of the Social Services Union were provided an advisory opinion holding that they were public employees and therefore required to complete and file Statements of Financial Disclosure under the Governor’s Code of Conduct. It was further noted that these statements would be made available to the public on request but redacted under Section 708(b)(6).

**Holding:** Though the statements required by the Governor’s Code of Conduct seek the submission of data in which there is a right to privacy, the government’s interest in regulating employee ethics is significant enough to make the requirements constitutional. However, the court enjoined the Office of Administration from releasing these statements without redacting personal financial data.

Case	Date	Citation
<a href="#"><u>City of Harrisburg v. Prince</u></a>	January 3, 2023	2023 Pa. Commw. LEXIS 1 (Pa. Commw. Ct. 2023)

**Request:** Information regarding donors to a City litigation defense fund

**Holding:** While the information contained on a donation qualifying as a financial record may not be exempt under the RTKL, a tribunal must still consider whether the identities of the donors are subject to the state constitutional right to privacy. Although information provided to the government in exchange for a benefit may result in a superior public interest in release of the applicant’s information, disclosure of mere donations encompasses a diminished public interest.

Furthermore, objectors to release of their information may object anonymously, and a tribunal is not required to receive verified statements from every objector.

## Records of a Judicial Agency

*The Constitutional separation of powers between executive and judicial agencies prohibits executive agencies from providing certain records.*

Case	Date	Citation
<a href="#"><u><i>Court of Common Pleas of Lackawanna County v. Office of Open Records</i></u></a>	August 11, 2010	2 A.3d 810 (Pa. Commw. Ct. 2010)

**Request:** Inappropriate emails from or to any email accounts used by a county employee, who was also a court employee.

**Holding:** The RTKL limits the records that judicial agencies must disclose to financial records, and the OOR may not decide appeals of records of a judicial agency, even if such records are held by an executive body.

Case	Date	Citation
<a href="#"><u><i>Register of Wills &amp; Clerk of the Orphans' Court of Philadelphia License Marriage Bureau v. Office of Open Records</i></u></a>	March 26, 2010	2010 Pa. Commw. Unpub. LEXIS 922 (Pa. Commw. Ct. 2010)

**Request:** Copies of 24 marriage license applications.

**Holding:** The Philadelphia Register of Wills & Clerk of the Orphans' Court is a judicial agency over which the OOR does not have jurisdiction.

Case	Date	Citation
<a href="#"><u><i>Grine v. Centre County</i></u></a>	April 13, 2016	138 A.3d 88 (Pa. Commw. Ct. 2016)

**History:** Several judges filed complaints seeking declaratory and injunctive relief to enjoin the County from responding to RTKL requests for “judicial records” related to their activities. A

Requester sought phone records relating to three judges. Since the County paid the phone bill, the request went to the County’s Open Records Officer, and the County had access to the records.

**Holding:** The Phone Records involve the usage of cellular phone services by the judges. The County conceded that the records document the judges’ activities in that they reveal their identities as the caller or recipient. However, to some extent the Phone Records also documented the County’s payment of Verizon invoices for service. As such, the Phone Records were simultaneously “of” the judicial agency and “of” the County. The judges established a clear right to relief to ensure the judiciary retains control over records showing the activities of uniform judicial system personnel. To avoid a potential separation of powers violation, the trial court properly enjoined the County from responding to requests for records “of” a judicial agency. When the responsive records are simultaneously of a county and of a judicial agency, a county must defer to the judicial agency for a response.

Case	Date	Citation
<a href="#"><i>Philadelphia District Attorney’s Office v. Stover</i></a>	September 12, 2017	176 A.3d 1024 (Pa. Commw. Ct. 2017)

**Request:** Copies of a conviction order, a sentencing order, and a court commitment form.

**Holding:** The requested records are judicial records and the District Attorney’s office is not required to provide copies in response to a RTKL request. The court noted, however, that the RTKL is not the sole mechanism for obtaining such records.

Case	Date	Citation
<a href="#"><i>Smith v. Phila. Office of Judicial Records</i></a>	September 25, 2020	2020 Pa. Commw. Unpub. LEXIS 466 (Pa. Commw. Ct. 2020)

**Request:** Written judgment of sentence order in a criminal proceeding.

**Holding:** The filing office of any court or court system is a judicial agency, and requests under the RTKL should be appealed to the appeals officers designated by the responsive courts. Furthermore, substantive filings such as orders and judgments are not financial records, and therefore are not subject to a judicial request. However, such records are generally available under court rules.

<b>Case</b>	<b>Date</b>	<b>Citation</b>
<a href="#"><u><i>Faulk v. Philadelphia Clerk of Courts</i></u></a>	May 28, 2015	116 A.3d 1183 (Pa. Commw. Ct. 2015)

**Request:** Certified sentencing orders related to the requester’s criminal case.

**Holding:** A sentencing order is a judicial record, and only the financial records of a judicial agency are accessible under the RTKL.

<b>Case</b>	<b>Date</b>	<b>Citation</b>
<a href="#"><u><i>Frazier v. Philadelphia County Office of the Prothonotary</i></u></a>	December 4, 2012	58 A.3d 858 (Pa. Commw. Ct. 2012)

**Request:** A copy of an autopsy report and other related information from county prothonotary.

**Holding:** The OOR does not have jurisdiction to hear appeals under the RTKL taken from determinations of a judicial agency of the Commonwealth. 65 P.S. § 67.503(a). Under the Pennsylvania Rules of Judicial Administration, court prothonotaries are personnel of the unified judicial system. Pa. R.J.A. No. 102. Moreover, the RTKL only requires judicial agencies to provide financial records. 65 P.S. § 67.304.

<b>Case</b>	<b>Date</b>	<b>Citation</b>
<a href="#"><u><i>Antidormi v. Lackawanna County Clerk of Courts</i></u></a>	September 14, 2011	2011 Pa. Commw. Unpub. LEXIS 779 (Pa. Commw. Ct. 2011)

**Request:** Notes of testimony, pleadings filed in a trial court case.

**Holding:** The OOR does not have jurisdiction over requests for the records of court staff, including a county Clerk of Courts.



Case	Date	Citation
<a href="#">Scolforo v. County of York</a>	July 10, 2023	298 A.3d 193 (Pa. Commw. Ct. 2023)

**Request:** Names, salary, job titles, and length of service of employees of the York County Prothonotary's Office.

**Holding:** Prothonotaries are judicial agencies under the RTKL, and even if those records are possessed by a County, they must be sought from the court under Rule 509.

## Judicial Review and Enforcement

*After an administrative appeal of a RTKL Request is concluded, the parties have thirty days in which they can appeal to a court. These cases examine the procedures involved.*

Case	Date	Citation
<a href="#"><u><i>Bowling v. Office of Open Records</i></u></a>	August 20, 2013	75 A.3d 453 (Pa. 2013)

**Request:** Records of invoices and contracts relating to equipment and services that Pennsylvania Emergency Management Agency (PEMA) had purchased using grant funds from the federal Department of Homeland Security.

**Holding:** The Pennsylvania Supreme Court granted allowance of appeal to determine the standard and scope of review that applies when a court reviews a final determination of the Office of Open Records. The first appellate court is to review appeals de novo, and the scope of review is broad or plenary when it hears appeals from determinations made by appeals officers under the RTKL.

Case	Date	Citation
<a href="#"><u><i>Baron v. Pa. Department of Human Services</i></u></a>	September 21, 2017	169 A.3d 1268 (Pa. Commw. Ct. 2017)

**Request:** Rates paid to nursing homes by managed care organizations.

**Holding:** Mandamus is not an appropriate remedy against a private party, and it was an infirm basis to compel disclosure by the Department when a challenge to the underlying Order was still pending. Both the appeals filed by the direct-interest participants and the requester’s cross-petition for review constitute appeals of a final determination, thus triggering an automatic stay of the release of all documents.

Case	Date	Citation
<a href="#"><u><i>Bethke v. City of Phila.</i></u></a>	September 20, 2022	282 A.3d 884 (Pa. Commw. Ct. 2022)

**Request:** All directives and policies of the Philadelphia Sheriff’s Office

**Holding:** An agency must timely file an appeal from an adverse Final Determination of the OOR within 30 days. An agency should not attempt to rely on convincing a reviewing court to alter the OOR’s order during an adverse enforcement action.

Case	Date	Citation
<a href="#"><i>Roddy v. Pa. Office of the Gov.</i></a>	December 15, 2020	No. 561 M.D. 2020 (Pa. Commw. Ct. 2020)

**History:** Petitioner filed a Petition to Enforce against the Governor’s Office in the Commonwealth Court after the Office did not produce unredacted records within thirty days.

**Holding:** Enforcement of OOR Final Determinations against Commonwealth agencies is governed by Pa. Rule of Appellate Procedure 3761, which identifies a Petition to Enforce as the proper vehicle and sets forth the requirements for that filing. The proceeding does not allow a party to collaterally attack the Final Determination, but when third-party privacy rights are implicated by a disclosure order the Court may provide for disclosure which protects those rights. Finally, an agency’s assertion that a record is insufficiently specific on appeal does not relieve it of its duty to present all applicable exemptions to the OOR; if it lacks the time to determine those exemptions, it should seek additional time under *APSCUF* rather than raise none of them.

Case	Date	Citation
<a href="#"><i>Guarrasi v. Scott</i></a>	June 21, 2011	25 A.3d 394 (Pa. Commw. Ct. 2011)

**History:** Court documents related to prior criminal proceedings against requester. Petitioner subsequently filed Petition for Review in Court’s original jurisdiction seeking declaratory relief against various “Bucks County judges, officials or employees ... who were designated as open-records officers or appeals officers” seeking an order declaring his common law and constitutional rights of access to the documents and requiring Defendants to forward the documents to him.

**Holding:** Because the Requester failed to appeal the denials of his requests and exhaust his administrative remedies under the RTKL, the court declined to address his original jurisdiction claims. The RTKL provides the exclusive means to seek redress for violations under the RTKL.

Case	Date	Citation
<a href="#"><u><i>Crockett v. Southeastern Pa. Transportation Authority (SEPTA)</i></u></a>	May 23, 2012	2012 Pa. Commw. Unpub. LEXIS 365 (Pa. Commw. Ct. 2012)

**Request:** Claim files, maintenance, repair, and inspection records, and any handwritten reports and/or the actual accounts of 156 incidents/accidents.

**Holding:** The filing of a petition for review “shall stay the release of documents” until the court resolves the case. While an appeal is pending in any court, mandamus is not available.

Case	Date	Citation
<a href="#"><u><i>Pennsylvanians for Union Reform v. Centre County District Attorney’s Office</i></u></a>	June 1, 2016	139 A.3d 354 (Pa. Commw. Ct. 2016)

**Request:** Records showing government-issued cellular telephone usage of certain individuals, and for the name and salary of its agency open records appeals officer.

**Holding:** The Commonwealth Court lacked jurisdiction over a political activist group’s petition for review of a final determination by an appeals officer for the District Attorney’s office, which denied access to records requested pursuant to the RTKL, because the District Attorney’s Office was not a judicial agency and as such, review was properly before the Court of Common Pleas.

Case	Date	Citation
<a href="#"><u><i>Capinski v. Upper Pottsgrove Township</i></u></a>	June 14, 2017	164 A.3d 601 (Pa. Commw. Ct. 2017)

**History:** Requester filed a petition to compel compliance with two final determinations. The Court of Common Pleas denied this petition, holding that the agency had produced all responsive records. The agency argued that the Court of Common Pleas did not have jurisdiction to hear this petition.

**Holding:** Mandamus is the action to file where the requester has not appealed the final determination to a court for a merits review and seeks compliance with a final determination of

the Office of Open Records as to a local agency, and it must be filed within the six-month statute of limitations in the Judicial Code. An improper “petition to enforce” may be treated as a mandamus when it pleads the essential factual prerequisites of mandamus.

Case	Date	Citation
<a href="#"><u>Drack v. Tanner</u></a>	October 12, 2017	172 A.3d 114 (Pa. Commw. Ct. 2017)

**History:** Two years after a final determination had been issued, a Requester filed a complaint in the Court of Common Pleas, requesting enforcement and seeking bad faith penalties. The Township filed preliminary objections in the nature of demurrer and for failure to join a necessary party. The Court of Common Pleas dismissed the complaint.

**Holding:** The Requester pleaded facts necessary to bring an enforcement action in mandamus against the Township. The trial court erred in sustaining the preliminary objections of the Township, as (1) the third parties implicated with the request did not need to be added to the lawsuit in order to compel compliance with the Final Determination of the OOR and (2) the trial court improperly relied upon testimony/evidence outside of the plead facts in the Complaint, when considering the Township’s demurrer.

Case	Date	Citation
<a href="#"><u>Bethke v. City of Philadelphia</u></a>	May 8, 2023	282 A.3d 884 (Pa. Commw. Ct. 2023)

**Request:** All policies from the Sheriff’s Office.

**Holding:** The failure of the Office to file a timely appeal from the OOR’s Final Determination was fatal to any appeal of the merits of the OOR’s decision, and the trial court could not grant relief *nunc pro tunc* where the Office had simply failed to meet the deadline without other factors.

Case	Date	Citation
<a href="#"><u>Cruz v. Pottsville Police Dep't</u></a>	September 18, 2023	2023 Pa. Commw. Unpub. LEXIS 513

**Request:** Use of force policies.

**Holding:** Failure to file a timely appeal from the OOR's Final Determination may result in the waiver of any arguments on appeal that the records are exempt from disclosure.

Case	Date	Citation
<a href="#"><u>Wishnefsky v. Pa. Department of Corrections</u></a>	July 8, 2015	2015 Pa. Commw. Unpub. LEXIS 473 (Pa. Commw. Ct. 2015)

**History:** The Requester sought copy of any report showing the amount received from inmates from the sale of commissary products, as well as sales broken down by category. After his appeal was granted by the OOR, the Department did not produce records, and the Requester filed a mandamus action to enforce the Final Determination.

**Holding:** Mandamus may be an appropriate vehicle by which to enforce a Final Determination. When a Final Determination issues and is not appealed or scheduled for reconsideration, it creates an enforceable right. Finally, a mandamus action may occur even when there are disputed factual issues.

Case	Date	Citation
<a href="#"><u>Buehl v. Pa. Department of Corrections</u></a>	July 27, 2015	2015 Commw. Unpub. LEXIS 552 (Pa. Commw. Ct. 2015)

**History:** Request dated September 11, 2014. On October 15, 2014, after properly invoking an extension, the agency granted the request in part, stating that it would provide redacted versions upon payment of \$106.25. Petitioner paid by money order in November 2014, and the agency mailed responsive records on December 4, 2014. Requester appealed to OOR, stating that he had been overcharged and that he didn't receive all of the records. OOR denied Requester's appeal as

untimely, holding that the period for any appeal from these actions by the agency began to run at the time of the agency’s October 15, 2014 response.

**Holding:** OOR erred in finding Petitioner’s appeal untimely with respect to his claim that he was improperly charged copying costs for blank pages of records. Remanded to OOR for further proceedings on that issue. Requester’s appeal rights vested upon receipt of documents which were redacted under a partial grant, because the denial did not occur until December 4, 2014, when the agency provided the redacted pages. Therefore, the deadline for filing an appeal on this issue began to run on December 4, 2014, not October 15, 2014.

Case	Date	Citation
<a href="#">Duquette v. Pa. Office of Open Records</a>	May 17, 2023	299 A.3d 190 (Pa. Commw. Ct. 2023)

**History:** The OOR issued a Final Determination, and the Requester filed an action in mandamus seeking to compel the OOR to disqualify an agency’s attorney and other injunctive relief. The OOR filed preliminary objections.

**Holding:** The RTKL provides an adequate method of appeal for disagreements which stem from the issuance of a Final Determination, and therefore collateral actions may be inappropriate.

Case	Date	Citation
<a href="#">Gray v. Phila. District Atty’s Office</a>	February 22, 2024	2024 Pa. Commw. LEXIS 64 (Pa. Commw. Ct. 2024)

**Request:** Sets of records related to the distribution of a video

**Holding:** The DA’s Office demonstrated that the records sought do not exist by providing evidence that it had conducted a search and that it had no reason to have a requested list. Furthermore, a Requester under the RTKL is permitted to withdraw an appeal in whole or in part during the appellate process.

## Sanctions and Penalties

*An agency which fails to properly discharge its duties under the law may have penalties imposed upon it by a court, including sanctions and attorney’s fees.*

Case	Date	Citation
<a href="#"><u><i>Crockett v. Southeastern Pa. Transportation Authority (SEPTA)</i></u></a>	September 11, 2012	2012 Pa. Commw. Unpub. LEXIS 685 (Pa. Commw. Ct. 2012)

**Request:** Information related to an accident that occurred on September 1, 2010, while requester was exiting a SEPTA train.

**Holding:** A showing of good faith effort by an agency to comply with the OOR’s Final Determination will prevent sanctions against the Agency from being issued for failure to comply. An award of damages requires the Agency to act in bad faith and fail or refuse to perform a duty required by law.

Case	Date	Citation
<a href="#"><u><i>Uniontown Newspapers, Inc., v. Pa. Department of Corrections</i></u></a>	December 19, 2016	151 A.3d 1196 (Pa. Commw. Ct. 2016)

**Request:** Documentation of illnesses contracted by inmates and/or staff members at SCI-Fayette.

**Holding:** Penalties for bad faith were premature in this case because there were still disputed facts as to whether the agency provided all of the requested records or not. Requester bears the burden of proving that DOC did not comply with OOR’s order directing DOC to disclose “all responsive records” within 30 days.



Case	Date	Citation
<a href="#"><i>Uniontown Newspapers, Inc. v. Pa. Department of Corrections</i></a>	March 23, 2018	185 A.3d 1161 (Pa. Commw. Ct. 2018)

**History:** The Commonwealth Court had made a finding of bad faith as to the agency’s compliance with the RTKL, and a hearing was held as to the matter of sanctions and attorney’s fees.

**Holding:** Relying upon Section 1304(a), the court construed the RTKL as permitting recovery of attorney fees when the receiving agency determination is reversed, and when the agency had deprived a requester of access to records in bad faith. The court granted the Requester’s fee petition, in part, and awarded it \$118,458.37 because the Requester demonstrated that the Department denied access willfully and with knowing disregard of Requester’s rights to access, and otherwise acted in bad faith.

Case	Date	Citation
<a href="#"><i>Philadelphia District Attorney’s Office v. Bagwell</i></a>	February 16, 2017	155 A.3d 1119 (Pa. Commw. Ct. 2017)

**Request:** Records related to emails backed up from the City of Philadelphia and in possession of the Philadelphia District Attorney’s Office.

**Holding:** The Commonwealth Court held that some of the emails in the possession of the District Attorney’s Office were not protected by an exemption in the RTKL. The District Attorney’s Office refused to disclose the requested records, and therefore a civil penalty was imposed and upheld by the Commonwealth Court as such behavior constitutes bad faith.

Case	Date	Citation
<a href="#"><i>City of Philadelphia v. Ali</i></a>	November 12, 2015	2015 Pa. Commw. Unpub. LEXIS 830 (Pa. Commw. Ct. 2015)

**Request:** Sought all records relating to the revitalization and redevelopment of a commercial corridor.

**Holding:** Section 1304(a)(2) of the RTKL provides that a court may award attorney’s fees and costs if the agency’s reasons for denial were not based on a reasonable interpretation of the law; Section 1304(b) allows an award if the court finds that a legal challenge under the RTKL was frivolous. Raising 1304(a)(2) only before a lower court results in waiver of an argument based on 1304(b) on appeal.

Case	Date	Citation
<a href="#"><i>Borough of Pottstown v. Suber-Aponte</i></a>	May 7, 2021	2021 Pa. Commw. Unpub. LEXIS 245, 256 A.3d 501

**Request:** Police video footage of the Requester taken during a specific time and date.

**Holding:** Because Requester did not appear at a hearing and present evidence in support of a claim of spoliation of evidence, the court properly declined to impose sanctions on bare allegations.

Case	Date	Citation
<a href="#"><i>McFalls v. Mun. of Norristown</i></a>	May 17, 2022	280 A.3d 345 (Pa. Commw. Ct. 2022)

**Request:** Documents regarding the requester’s interaction with police officers

**Holding:** The RTKL is not a vehicle of the criminal discovery process, and an agency is not liable for prejudice to a criminal proceeding from delayed RTKL responses. Furthermore, the proper vehicle to enforce a Final Determination of the OOR is a petition in mandamus. Finally, the requester’s motives in seeking documents are not relevant to a determination of bad faith- only the conduct of the agency is relevant.

Case	Date	Citation
<a href="#"><i>Bethke v. City of Phila.</i></a>	September 20, 2022	282 A.3d 884 (Pa. Commw. Ct. 2022)

**Request:** All directives and policies of the Philadelphia Sheriff’s Office

**Holding:** An agency must timely file an appeal from an adverse Final Determination of the OOR within 30 days. An agency should not attempt to rely on convincing a reviewing court to alter the OOR’s order during an adverse enforcement action.

Case	Date	Citation
<a href="#"><i>Mont. Co. v. Brock</i></a>	September 28, 2022	286 A.3d 402 (Pa. Commw. Ct. 2022)

**Request:** All communications to the County Department of Health referencing several keywords

**Holding:** Failure to timely appeal a Final Determination of the OOR may not be resolved via *nunc pro tunc* relief if the cause of that failure is an agency’s negligence rather than sufficient extraordinary circumstances. However, an agency’s conduct is not sanctionable bad faith where it timely responds to a request and merely seeks prepayment of fees, even if that fee demand is later overturned.

Case	Date	Citation
<a href="#"><i>Sawicki v. Wessels</i></a>	December 19, 2022	2022 Pa. Commw. Unpub. LEXIS 556 (Pa. Commw. Ct. 2022)

**Request:** Invoices to the Borough solicitor and communications mentioning the Requester

**Holding:** Where an agency fails to prove that records do not exist and the OOR grants an appeal, the agency may satisfy the order by producing specific evidence that the records do not, in fact, exist. Additionally, a lawyer may not obtain attorney’s fees while representing themselves, but a *pro se* litigant may still be able to recover the costs of the case under the RTKL. Finally, a court must analyze a claim of bad faith under the RTKL without reference to the mental state of the Requester.

The *Right-to-Know Law Case Law Index* was prepared by the Office of Open Records as a resource for agencies and requesters. It does not include every appellate case, and you should not rely upon it in place of experienced legal counsel.

Additional resources are available on the OOR's website:

<https://www.openrecords.pa.gov/>