

Title 51 Pa. Code

Part IV. OFFICE OF OPEN RECORDS

CHAPTER 77. APPEALS PROCESS

Subchapter A. GENERAL PROVISIONS

§ 77.1. Purpose.

The purpose of this part is to promote the orderly and prompt resolution of appeals of decisions of Commonwealth and local agencies under the RTKL.

§ 77.2. Scope of part.

(a) This part governs practice and procedure before the OOR.

(b) Except when inconsistent with this part and as provided in paragraph (c), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) is applicable to practice and procedure before the OOR.

(c) Sections 31.2, 31.13, 31.25, 33.1—33.4, 33.11, 33.15, 35.21—35.23, 33.31, 33.32, 33.34—33.37, 33.42, 33.51, 33.61, 35.1, 35.2, 35.5—35.7, 35.9—35.11, 35.14, 35.19, 35.20, 35.23, 35.24, 35.35—35.41, 35.45, 35.48, 35.51, 35.54, 35.55, 35.101, 35.103, 35.127, 35.201—35.207, 35.211—35.214, 35.221, 35.225, 35.226, and 35.231—35.233 of 1 Pa. Code do not apply to practice and procedure before the OOR.

§ 77.3. Liberal construction.

(a) This part will be liberally construed to secure the just, speedy and inexpensive adjudication of every applicable appeal. The OOR or appeals officer at any stage of an action or proceeding may disregard an error or defect of procedure that does not affect the substantive rights of any party or may waive a requirement of this part when necessary or appropriate if the waiver does not adversely affect a substantive right of a party.

(b) This section supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

§ 77.4. Forms.

The OOR may publish and distribute forms required to implement this subchapter.

§ 77.5. Definitions.

(a) The following words and terms, when used in this part, have the following meanings:

Address—A requester’s address under section 703 of the RTKL (65 P.S. § 67.703) refers to the email or postal location listed by a requester to which an agency will direct its response. An agency’s address under section 903 of the RTKL refers to the address of the AORO.

Agency—A Commonwealth or local agency as defined in section 102 of the RTKL (65 P.S. § 67.102).

Agency employee—An individual employed by an agency.

AORO—An individual designated by an agency as the agency’s open-records officer under section 502(a)(1) of the RTKL (65 P.S. § 67.502(a)(1)).

Appeals Officer—An attorney licensed in this Commonwealth designated by the Executive Director under section 1310 of the RTKL (65 P.S. § 67.1310).

Business day—A day that is not a Saturday, Sunday, legal holiday or official agency closing.

Commercial entity—A corporation, partnership, limited liability company, business trust or similar entity or an individual acting on behalf of a corporation, partnership, limited liability company, business trust or similar entity. The term does not include a nonprofit corporation or other nonprofit entity, the news media, a journalist, or an author.

Deemed denial—The failure of an agency to issue a timely response to a request under section 901 or 902(b) of the RTKL (65 P.S. §§ 67.901 and 67.902(b)).

Deficient appeal—An appeal received by the OOR that does not include information or documents, or both, required under the RTKL or § 77.46 (relating to docketing of appeals), or both.

Direct interest participant—A person or entity, other than the requester or agency, who has been granted the ability to participate before the OOR under § 77.75 (relating to request for direct interest participant status).

Disaster Declaration - A declaration by the Governor of disaster emergency under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor). Act of Jul. 27, 2020, P.L. 702, No. 77

Electronic transmission—The sending or submitting of materials through email, facsimile, web-based form or other method accepted by the OOR.

Executive director—The Executive Director of the OOR.

Extension notice—Written correspondence from an agency invoking an extension of time to respond to a request under section 902 of the RTKL.

Final determination— A written final order issued by an appeals officer in an appeal concerning access to a record under section 1102(a)(4) of the RTKL (65 P.S. § 67.1102(a)(4)).

In camera inspection—A proceeding during which an appeals officer privately reviews records claimed to be nonpublic and submitted by an agency or direct interest participant.

Non-ancillary agency function—A core activity assigned to government agencies as established by statute, regulation, or common law.

OOR—The Office of Open Records of the Commonwealth.

OOR appeal portal – An online system maintained by the OOR and used by requestors to file appeals and allows both parties access to appeal docket sheets and submissions managed by the appeals officer.

Party—A requester, an agency, or a direct interest participant, if applicable.

Personal information—The term includes, but is not limited to, all of the following:

- (i) Personal financial information and other individual information enumerated in the RTKL.
- (ii) An individual's financial institution account information.
- (iii) IRS form W-2 or its equivalent.
- (iv) Individual employee benefit election information other than an election to become a member of the State Employees' Retirement System, the Public School Employees' Retirement System, the Pennsylvania Municipal Retirement System or any other retirement plan for employees of the Commonwealth or any of its political subdivisions.
- (v) Individual employee contributions to retirement plans and investment options.
- (vi) Individual employee contributions toward the cost of health care benefits or other benefits.
- (vii) Individual employee contributions to charitable organizations.
- (viii) An individual's home address.
- (ix) Information that affects the legal or personal safety interests of an individual.

Petition for reconsideration—An application for a readjudication of a final determination of an appeal based on the contents of the record before the OOR.

Reasonable expectation of privacy—An expectation of privacy as established by Pennsylvania appellate courts. The term does not include any record that is public in nature as established by Federal or Commonwealth statute, common law, court order, regulation or local agency ordinance, or information contained in a time response log.

Request—A written communication seeking a copy of or access to a record under section 703 of the RTKL that is sent or addressed to an AORO.

Respondent—An agency or entity subject to the RTKL that either responded or did not issue a response to a request for records that is the subject of an appeal filed by a Requester.

RTKL—The Right-to-Know Law (65 P.S. §§ 67.101—67.3104).

Third party—An individual, including an agency employee, who has provided personal information to an agency or whose information is acquired by an agency, or an entity which has contracted with an agency.

Time response log—A log created, received, maintained or retained by a public safety answering point (PSAP), as defined by 35 Pa.C.S. § 5302 (relating to definitions), or a dedicated emergency response organization (DERO), as defined by 35 Pa.C.S. § 7332 (relating to definitions), containing at a minimum the following information:

- (i) The time the call was received by the PSAP.
- (ii) The time the PSAP contacted or dispatched the DERO for response.
- (iii) The time the DERO responded.
- (iv) The time the DERO arrived on the scene.
- (v) The time the DERO became available.
- (vi) The address of the incident or the street block identifier, the cross street or mile marker nearest the scene of the incident.

- (b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions) except for “agency,” which supersedes the definition of “agency” in 1 Pa. Code § 31.3.

§ 77.6. Computation of time.

- (a) Computation of time for RTKL requests:

- (1) A response to a RTKL request under section 901 of the RTKL (65 P.S. §§ 67.901), must be made within five business days from the date the request is received. The calculation of the deadline for agency response begins on the first business day after the written request is received by the AORO. In the event of a Governor’s declaration of a disaster emergency under 35 Pa.C.S. § 7301(c) (relating to general authority of the Governor) Commonwealth agencies must follow the OOR guidelines specifying how a Commonwealth agency shall respond to a request for records when a Commonwealth agency’s physical location is closed.
- (2) An agency may invoke an additional 30 days to respond to a request pursuant to section 902 of the RTKL (65 P.S. § 67.902).

- (i) In order to extend the response time, the agency must send written notice of the 30-day extension to the requester within five business days of receipt of the request.
 - (ii) A notice under paragraph (i) shall include the information required under Section 902(b)(2) of the RTKL (65 P.S. § 67.902(b)(2)). If the notice does not include the required information, the appeal will be considered deemed denied.
- (3) On sending written notice, the time for an agency's response to the request is extended for 30 days beyond the original five business days. The calculation of the new response deadline will begin on the first calendar day after the original five business day response period under section 901 of the RTKL, regardless of when within the five business day period the agency invoked a 30-day extension.

(b) Computation of time for RTKL appeals:

- (1) An appeal filed under section 1101 of the RTKL (65 P.S. § 67.1101) must be filed within 15 business days of the mailing date of an agency's response denying access or a deemed denial, whichever is earliest.
- (i) Before filing an appeal of a request filed via first class mail, a requester shall allow three mailing days beyond the agency's response deadline for receipt of the agency's response or extension notice. Appeals filed before three mailing days have expired will be dismissed as premature. This dismissal does not preclude the requester from filing a subsequent timely appeal.
 - (ii) If an agency's response or extension notice is untimely the request is deemed denied. The appeal must be filed within 15 business days of the date the request is deemed denied. However, if an agency invokes a 30-day extension after the five business day period has expired, and the requester subsequently relies on the improper extension to determine when an appeal should be filed, the OOR may accept the appeal as timely filed so long as it was filed within 15 business days of the final day of the improper extension.

(c) Computation of time for the issuance of a RTKL final determination:

- (1) The calculation of the deadline for the issuance of a final determination by the OOR under section 1101 of the RTKL (65 P.S. § 67.1101) will begin on the first day after the receipt of the appeal by the OOR. The deadline is calculated by adding 30 calendar days to the date the appeal was date stamped as received by the OOR or the date the appeal was filed on the OOR appeal portal.
- (2) If the requester has granted the OOR additional time to issue a final determination, the deadline for the issuance of a final determination will be calculated by adding the number of calendar days specified by the requester to the date the appeal was date

stamped received by the OOR. If the new date falls on a non-business day, it will be moved to the next business day.

(3) If the requester indicates an interest in mediation on the appeal form when filing an appeal, the proceeding is automatically stayed for seven business days. The deadline for the issuance of a final determination is then calculated by adding seven business days to the date the appeal was received by the OOR and then adding 30 calendar days to that date. If the new date falls on a non-business day, it will be moved to the next business day.

(4) For appeals that involve both an extension and a checked mediation box, the proceeding is stayed for seven business days. The deadline of the issuance of a final determination is calculated by adding the following to the date the appeal was received by the OOR: Seven business days plus 30 calendar days, and the number of calendar days specified on the form for the extension. If the new date falls on a non-business day, it will be moved to the next business day.

(d) Computation of time for a petition for review of an OOR final determination will be as follows:

(1) The calculation of the deadline to file a petition for review of a final determination issued by the OOR under section 1301 of the RTKL (65 P.S. § 67.1301 will begin on the “issued and mailed” date on the final page of the final determination. The deadline is calculated by adding 30 calendar days to the final determination issuance date.

(2) The filing of a petition for reconsideration or the OOR’s granting of a petition for reconsideration does *not* toll the time period for seeking judicial review under sections 1301 and 1302 of the RTKL (65 P.S. §§ 67.1301 and 67.1302).

(e) Subsections (a) (b) and (c) supersede 1 Pa. Code § 31.12 (relating to computation of time).

Subchapter B. PROCEDURE FOR RESPONDING TO REQUESTS

§ 77.21. Registration of AOROs.

(a) An agency shall register its AORO with the OOR within 30 days of when a new AORO or alternate AORO has been designated.

(b) An agency’s registration must include:

(1) The name of its AORO.

(2) The name of its alternate AORO, if appropriate.

(3) The contact information of its AORO and alternate AORO, including a mailing address and, if available, email address.

(4) The number for receiving RTKL requests submitted by facsimile, if available.

(5) The email address for receiving RTKL requests, if available.

(6) The URL for the agency’s website, if the agency maintains a website.

§ 77.22. General notice.

- (a) Each agency shall post a public notice at its administrative office and any agency office or agency website that collects personal information that is not exempt from disclosure under any Federal or State law or regulation or judicial order or decree. The notice shall contain the following information:
 - (1) The name of the agency issuing the notice.
 - (2) A statement that the personal information collected by the agency that is not exempt from disclosure under any Federal or State law or regulation or judicial order or decree may be subject to access under the RTKL.
 - (3) A brief description of the procedures through which third parties can object to the release of their personal information in which there is a reasonable expectation of privacy in response to a future request.
 - (4) The name, address, telephone number and email address of the AORO or agency employee from whom an interested individual may obtain additional information.
- (b) The notice required in subsection (a) shall also be provided through the least burdensome method or methods reasonably likely to provide notice to individuals whose personal information is in the possession of the agency, including any combination of the following:
 - (1) Statement on agency forms which collect personal information.
 - (2) Agency newsletter.
 - (3) Agency employee handbook.
 - (4) Agency email list.
 - (5) Agency press release.
 - (6) Agency social media accounts.
 - (7) *Pennsylvania Bulletin*.
 - (8) Local newspaper of general circulation.
 - (9) Local or State law journal.
- (c) The agency shall post an updated version of the notice required in subsection (a) within 30 days if storage circumstances or media change, or if a different class of records is developed.
- (d) The OOR shall develop a model notice that will be placed on the OOR website.

§ 77.23. Third-party interest policy.

- (a) Each agency shall adopt a policy that allows third parties to object to the release of personal information in which there is a reasonable expectation of privacy before the agency's release of that information in response to a request. The agency's policy must ensure that:
 - (1) The agency complies with notice requirements under §§ 77.22 and 77.25(a) (relating to general notice; and notice to third parties of the release of their personal information in which there is a reasonable expectation of privacy).

- (2) The agency redacts the personal information of third parties that object to the release of their personal information under §§ 77.25(a) (relating to the release of third party personal information in which there is a reasonable expectation of privacy).
- (b) The OOR shall develop a model third-party interest policy and notification form that will be placed on the OOR website.

§ 77.24. Requests for records containing the personal information of third parties.

- (a) On receipt of a request for records, an agency shall determine whether the request seeks a record that contains a third party's personal information in which there is a reasonable expectation of privacy.
 - (1) If a third party's personal information in which there is a reasonable expectation of privacy is contained in a record subject to public access and the third party's privacy interest in withholding personal information outweighs the public interest in the requested information, the agency shall redact the third party's personal information in accordance with section 706 of the RTKL (65 P.S. § 67.706).
 - (2) If a third party's personal information in which there is a reasonable expectation of privacy is contained in a record subject to public access and public interest in the requested information outweighs the third party's privacy interest in withholding personal information, the agency may release or withhold third party personal information for other non-privacy related reasons such as agency discretion and exemptions in accordance with sections 506(c) and 708 of the RTKL (65 P.S. §§ 67.506(c) and 67.708). If the agency determines the record containing the personal information is to be released, prior to releasing the information, the agency must comply with the notice requirements in § 77.25 relating to notice to third parties of the release of their personal information in which there is a reasonable expectation of privacy.

§ 77.25. Notice to third parties of the release of their personal information in which there is a reasonable expectation of privacy.

- (a) On receipt of a request for a record that contains a third party's personal information in which there is a reasonable expectation of privacy, the agency shall invoke a 30-day extension under section 902(a)(7) of the RTKL (65 P.S. § 67.902) to respond to the request in order to allow third parties to enter any objection to the release of records.
- (b) If the agency makes the determination that it will grant access to records to a requester under § 77.24(b)(2) (relating to requests for records containing the personal information of third parties), prior to releasing the records, the agency shall provide written notice to the third parties whose personal information in which there is a reasonable expectation of privacy is contained in the records no fewer than 14 days before its release. The notice must include all of the following information:

- (1) A brief description of the requested record(s);
 - (2) A description of the personal information included in the requested record(s);
 - (3) The date on which the records are planned to be released, which is the deadline of the agency to respond to the request under a 30-day extension under section 902 of the RTKL (65 P.S. § 67.902); and
 - (4) The deadline for the third party to submit an objection to the agency, which is seven days before the date the records will be released.
- (c) The agency shall redact the personal information of individuals who object to the release in response to the notice provided under subsection (a).
- (d) The agency shall redact the personal information of individuals if it is unable to provide timely notice under subsection (b).
- (e) If the agency makes the determination it will deny access to records containing personal information, the agency is not required to provide notice to third parties.

§ 77.26. Notice to contractors and vendors.

On receipt of a request for records in the possession of an agency's contractor or vendor that are directly related to a contracted non-ancillary agency function, the agency shall notify the agency's contractor or vendor of the request and obtain copies of all records responsive to the request that directly relate to the contracted non-ancillary agency function.

§ 77.27. Requests made by commercial entities.

- (a) The uniform request form developed by the OOR under section 505(a) of the RTKL (65 P.S. § 67.505(a)) shall require a requester to certify whether the requester is a commercial entity. This certification must be made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).
- (b) A request form developed by an agency may require a requester to certify whether the requester is a commercial entity and may require the certification to be made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

§ 77.28 Preserving responsive records during the request and administrative appeal process.

- (a) An agency's receipt of a request stays the disposition of records documenting a transaction or activity of the agency that are reasonably responsive to that request. Absent the receipt of a request, an agency may dispose of its records in a manner consistent with applicable agency records retention policies.
- (b) An agency may not dispose of records reasonably determined to be responsive to a request until 60 calendar days after the last administrative or judicial appeal period has expired in

accordance with section 905 of the RTKL (65 P.S. § 67.905) or the expiration of the applicable records retention period, whichever is later.

Subchapter C. PROCEDURE FOR FILING APPEALS

§ 77.41. Communications and filings generally.

- (a) Communications, appeals, supplementary documents and all other correspondence is addressed as follows:

Executive Director
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
Facsimile: 717-425-5343
Email: openrecords@pa.gov

Or submitted through the OOR appeal portal.

- (b) The OOR will be open from 9 a.m. to 5 p.m. each weekday, except as follows:

- (1) A legal holiday designated by section 1 of the act of May 31, 1893 (P.L. 188, No. 138).
- (2) Saturdays and Sundays.
- (3) A day declared a holiday by the Office of Administration.
- (4) Any other day on which the OOR is closed.

- (c) Appeals submitted through postal mail or in person that are received after 5 p.m. will be stamped or deemed as having been received on the following business day.

- (d) Appeals submitted by electronic transmission, including through the OOR appeal portal, will be accepted up to 11:59:59 p.m. and will be date-stamped as being received on the same business day as they are transmitted, unless the date the appeal is transmitted falls outside a business day of the OOR in which case the appeal will be deemed as having been received on the following business day.

- (e) Subsections (a)—(d) supersede 1 Pa. Code § 31.5 (relating to communications and filings generally).

§ 77.42. Timely filing of appeal required.

- (a) An appeal before the RTKL shall be filed with the OOR within the earliest of either of the following:

- (1) Fifteen business days of the mailing date of the agency's response.
- (2) Fifteen business days of notice of the agency's deemed denial of a request.

- (b) Appeals received after the statutory deadline will be dismissed except as set forth in 77.6(b)(1)(ii).
- (c) The OOR will presume that correspondence from an agency was in fact properly mailed and timely received. Evidence that correspondence has been mailed or emailed in the ordinary course of agency business will be sufficient to permit the OOR to find that the correspondence was in fact received by the party to whom it was addressed. To rebut this presumption, it is not sufficient merely to deny receipt.
- (d) If a requester is incarcerated, the OOR will consider appeal submissions timely filed with evidence that the appeal was placed into the institutional mail within the 15-business day appeal period provided under section 1101(a)(1) of the RTKL (65 P.S. § 67.1101(a)(1)).
- (e) If an appeal is not received by the OOR due to an administrative breakdown involving the OOR's procedures or practices, the OOR may choose to accept an otherwise untimely appeal.
- (f) Subsections (a)—(e) supersede 1 Pa. Code §§ 31.11 and 31.15 (relating to timely filing required; and extensions of time).

§ 77.43. Method of filing an appeal.

(a) *Methods of filing.* The OOR will accept an appeal filed by any of the following methods:

- (1) Personal delivery.
- (2) Postal or commercial delivery service.
- (3) Electronic transmission, including through the OOR appeal portal.
- (4) Other methods specifically noted on the OOR website.

(b) *Paper requirements.* Appeals filed on paper are subject to the following:

- (1) Except as provided in paragraphs (3) and (4), an appeal filed by personal delivery or through a postal or commercial delivery service must be submitted on 8 ½-inch x 11-inch or 8 ½-inch x 14-inch paper.
- (2) Subsequent hard copy submissions after an appeal has been docketed should be submitted on 8 ½-inch x 11-inch or 8 ½-inch x 14-inch paper to the extent possible.
- (3) The OOR may dismiss a hard copy appeal that is not submitted on 8 ½-inch x 11-inch or 8 ½-inch x 14-inch paper, unless the party filing the document specifically seeks and is granted permission to file nonconforming papers.
- (4) The OOR will not dismiss an appeal containing paper that does not conform with the size requirements in this subsection if either:
 - (i) The request is submitted by the requester to an agency on a form provided by the agency that does not conform to the size requirements listed above.

- (ii) The agency's response to a request is provided on paper that does not conform to the size requirements in this subsection.

§ 77.44. Determination of filing date.

Except as provided in § 77.41(c) and (d) (relating to communications and filings generally), the OOR will determine the filing date of an appeal as follows:

- (1) Personal delivery. The date indicated on the OOR's time and date stamp.
- (2) Postal or commercial delivery service. The date indicated on the OOR's time and date stamp or the date indicated delivered by the postal or commercial delivery services confirmation.
- (3) Electronic transmission. The date of receipt indicated on the OOR's computer network, OOR appeal portal or facsimile machine.

§ 77.45. Form and contents of appeal.

(a) An appeal must be in writing and shall:

- (1) Include a copy of the request filed with the agency.
- (2) Include a copy of the agency's response, if any.
- (3) State the grounds upon which the requester asserts that the record is a public record.
- (4) Address any grounds stated by the agency for denying the request.

(b) An appeal may be submitted using the appeal form found on the OOR's website or through the OOR appeal portal.

§ 77.46. Docketing of appeals.

(a) On receipt of an appeal, the OOR will determine if an appeal contains the information and documents required under § 77.45 (relating to form and contents of appeal) and will docket and number the appeal. The parties will be given access to the OOR appeal portal.

(b) The OOR will advise the requester and agency of the docket number, the deadline for submitting additional information and the contact information for the assigned appeals officer through the official Notice of Appeal.

(c) The OOR will maintain a docket of all proceedings. Each proceeding will be assigned a number. The OOR will make the docket available for inspection and copying by the public.

§ 77.47. Deficient appeal.

(a) The OOR will consider an appeal that does not include the documents required under § 77.45(a) (relating to form and contents of appeal) to be a deficient appeal.

- (b) On receipt of a timely deficient appeal, the OOR will issue an order requiring the requester to provide the missing documents required under § 77.45(a)(1) and (2) within fourteen calendar days. Failure of the requester to provide the missing documents will result in the dismissal of the appeal.
- (c) On receipt of an untimely deficient appeal, the OOR will dismiss the deficient appeal without notice of the deficiency.

§ 77.48. Entry of appearance.

- (a) A party is not required to be represented by counsel.
- (b) Subsection (a) supersedes 1 Pa. Code §§ 31.21—31.24.

§ 77.49. Public access to OOR appeal files.

- (a) The contents of an appeal filed with the OOR and subsequent submissions related to that appeal are records of a quasi-judicial proceeding and subject to public access under common law, except as provided in §§ 77.94 and 77.104 (relating to records of the mediation process; and maintaining the confidentiality of records submitted for in camera inspection).
- (b) Individuals making a submission to the OOR shall ensure that only information intended for public access is included in the submission. An individual's failure to exclude sensitive information from a submission does not affect the public's right to access OOR appeal files, although the OOR may in its discretion redact the information enumerated in this subsection before releasing an appeal file. The following information should not be included in any document filed with the OOR, except as permitted in Subchapter F (relating to procedure for conducting in camera review):
 - (1) Social Security numbers.
 - (2) Financial account numbers.
 - (3) Credit card numbers.
 - (4) Driver's license numbers.
 - (5) State identification numbers.
 - (6) Minors' names and dates of birth.
 - (7) Passwords and PINs.

- (c) In response to a request for bulk distribution of electronic case records, information maintained in the OOR database used to log and track RTKL appeals is subject to public access except for a requester's telephone number, fax number, email address, and street address. A requester's city, state, and ZIP code may be released.

§ 77.50. Jurisdiction over appeals.

- (a) Except as provided in section 503(d) of the RTKL, the OOR shall have exclusive jurisdiction over all appeals filed against agencies under the RTKL.

- (b) An appeals officer designated by a district attorney under section 503(d)(2) of the RTKL shall have jurisdiction over an appeal only as it relates to access to criminal investigative records in possession of a local agency. To the extent an appeal involves multiple issues, one of which relates to access to criminal investigative records in possession of a local agency, the OOR shall have jurisdiction over all other issues in the appeal.

§ 77.51. Final determinations to be posted by the OOR.

- (a) The OOR shall post all final determinations issued by the OOR on its website.
- (b) All appeals officers designated under section 503(d)(2) of the RTKL shall send a copy of any final determination issued to the OOR, in a manner and form prescribed by the OOR, within seven days. The OOR shall post the final determinations on its website upon issuance of an order.

Subchapter D. PROCEDURE FOR ADMINISTERING APPEALS

§ 77.71. Submission of filings after the docketing of an appeal.

- (a) After the OOR has docketed an appeal, a party may make supplemental filings by mail or through the OOR appeal portal.
 - (1) A party shall provide one copy of all paper filings to the OOR, except as otherwise provided.
 - (2) Parties shall provide electronic submissions in a method and format accepted by OOR. The OOR will maintain a list of accepted electronic methods and formats on its website.
 - (3) The appeals officer may extend the deadline for submissions.
- (b) Submissions by filing parties are made to all parties and on all additional persons as the OOR or appeals officer directs, except as provided in § 77.92 (relating to separate communications during the mediation process) and § 77.102(a) (relating to submitting records to the OOR for in camera inspection).
 - (1) Service upon a party represented by an attorney in the matter before the OOR is made by serving the attorney and they will be provided access to the OOR appeal portal.
 - (2) The party submitting a paper filing to the OOR must indicate that all other parties received a copy of the submission.

§ 77.72. Deciding procedural matters.

(a) The appeals officer will rule on procedural matters on the basis of justice, fairness and expeditious resolution of the dispute in the absence of a regulation, policy or procedure expressly governing appeals as set forth in the RTKL or by the OOR.

(b) The appeals officer will consolidate matters if appropriate.

§ 77.73. Additional information.

(a) The appeals officer may admit into the record testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute.

(b) The appeals officer may require the submission of an exemption log containing the following information, unless additional information is requested by the appeals officer:

(1) The date of the record.

(2) A description of the type of record (email, memo or text message).

(3) The name and title of the author and the recipient of the record (agency attorney, official, employee, or contractor).

(4) A general description of the subject matter of the record.

(5) A citation to the legal basis justifying the withholding of the record or redaction from the record.

(c) An appeals officer may at any time seek additional information from a requester, agency and direct interest participant and will provide an appropriate deadline for submitting additional information.

§ 77.74. Agency notice of appeal to third parties and agency contractors or vendors.

(a) In the event records subject to an appeal contain the personal information of third parties that was withheld by the agency or are records held by an agency contractor or vendor, the agency shall notify those persons of the appeal before the OOR and advise them of their ability to participate under section 1101(c) of the RTKL (65 P.S. § 67.1101(c)).

(b) The notice required in subsection (a) shall be provided through the least burdensome method or methods reasonably likely to provide notice to individuals whose personal information is in the possession of the agency, including by providing the entire contents of the appeal as provided by the OOR, with notice that they may participate before the OOR under section 1101(c) of the RTKL.

(c) The agency shall provide proof that the notice required under subsection (b) was sent to all relevant third parties to the OOR by the submission deadline set forth in the Official Notice of Appeal.

(d) If the agency cannot provide notice as within the time required under subsection (b), the agency shall request an extension to provide the required notice and shall provide the OOR with an estimate of the length of time required to provide the notice. The OOR will grant a reasonable

extension to allow the agency to provide the notice required under subsection (a) and submit proof of that notice as required by this section. The OOR will issue a final determination within 30 days of the agency's submission of proof of notice.

- (e) The OOR will not order the release of a third party's personal information withheld by the agency unless the agency provides proof that notice was provided to that third party as required under subsection (c), there is no reasonable expectation of privacy in the personal information at issue in the appeal, or the public interest in the requested information outweighs the third party's privacy interest in withholding personal information.

§ 77.75. Request for direct interest participant status.

- (a) A person may request direct interest participant status in an appeal by filing a written request or through the OOR appeal portal to provide information to appear before the assigned appeals officer or to file information in support of the requester's or agency's position.
 - (1) A written request for direct interest participant status is sent to the OOR or requested through the OOR appeal portal to the agency requester, and all other parties in the appeal.
 - (2) A written or OOR appeal portal request for direct interest participant status must explain the direct interest and why the person will be aggrieved by actions or adjudications of the OOR.
- (b) A written or OOR appeal portal request for direct interest participant status shall be filed within 15 days of the notice required under § 77.74 (relating to agency notice of appeal to third parties and agency contractors or vendors) or actual notice, whichever is later, except that a written request for direct interest participant status can be filed no later than:
 - (1) The date the appeals officer holds a hearing; or
 - (2) The date the appeals officer issues a final determination.
- (c) The parties may file a response or objection to a request to a written or OOR appeal portal request for direct interest participant status before the appeals officer's grant or denial of the request.
- (d) The appeals officer will act on a written or OOR appeal portal request to provide information from persons seeking to participate as a direct interest participant and any party's response or objection. The appeals officer will grant direct interest participation status to persons that establish that they will be aggrieved by actions or adjudications of the OOR.
- (e) A person granted direct interest participant shall serve copies of any submissions to the OOR on all parties in the appeal through the mail or OOR appeal portal.
- (f) Subsections (a)—(e) supplements 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

§ 77.76. Extension of the final determination deadline.

- (a) If the issue in an appeal pending before the OOR is substantially the same as an issue currently on appeal to a court of common pleas, the Commonwealth Court, or the Pennsylvania Supreme Court, the appeals officer may stay the OOR's final determination for 30 days beyond the date of that Court's final Order.
- (b) If the agency requires additional time to prepare and submit evidence to the OOR due to a large number of responsive records, the agency shall provide the OOR with an estimate of the number of documents being requested and the length of time that people charged with reviewing the request to conduct a document-by-document review. If the request involves documents in electronic format, the agency shall explain any difficulties it faces when attempting to deliver the documents in that format. The OOR may grant the additional time warranted so that the agency can reasonably discern whether any exemptions apply and appropriately develop the record before the OOR. The OOR will issue a final determination as soon as reasonably practicable under the circumstances following the agency's filing of its supplemental submission.

§ 77.77. Transfer of appeals.

If an appeals officer does not have jurisdiction to hear an appeal or part of an appeal, but another appeals officer designated under section 503 of the RTKL (65 P.S. § 67.503) has jurisdiction, the original appeals officer will transfer the appeal or part of the appeal, as appropriate, to the other appeals officer. If the appeal was timely filed with the original appeals officer, it is considered timely filed upon the transfer. The appeals officer with jurisdiction shall issue a final determination within thirty calendar days of the receipt of the appeal from the original appeals officer, unless a valid extension is invoked.

Subchapter E. PROCEDURE FOR MEDIATIONS

§ 77.91. Participating in the mediation process.

- (a) The parties of an appeal may participate in the OOR Mediation Program.
- (b) The parties may agree to enter the mediation process at any time before the issuance of the final determination.
- (c) To participate in the OOR Mediation Program:
 - (1) The parties shall agree in writing to participate in the mediation process; and
 - (2) The requester shall agree to extend the deadline to issue a final determination until 30 days after the date the mediation process concludes.

§ 77.92. Facilitating the mediation process.

- (a) The mediation process begins when the parties consent to mediation and the OOR assigns the appeal to a mediator.
- (b) The mediator's role is to facilitate the mediation process in an effort to settle the contested issues between or among the parties. The mediator will not make a decision on the merits of the issues.
- (c) The mediator may communicate with each party individually.

§ 77.93. Concluding the mediation process.

- (a) If an agreement between the parties is reached through the mediation process, the requester shall withdraw the appeal before the OOR.
- (b) If the mediator determines or any party notifies the mediator that mediation is unsuccessful:
 - (1) The mediator shall send correspondence to the parties indicating that the mediation process is concluded.
 - (2) The OOR will transfer the appeal to an appeals officer who shall issue a final determination.

§ 77.94. Records of the mediation process.

- (a) All records sent by or submissions made to a mediator during an OOR mediation are not subject to public access.
- (b) All written mediation communications and mediation documents sent by or submitted to a mediator or the OOR Mediation Program will be excluded from the public appeal file and disposed of securely at the conclusion of the mediation process in accordance with OOR records retention policies.
- (c) The OOR's mediation file will contain a mediator report that includes the docket number, the date the parties agreed to mediation, the parties' contact information, dates of mediation sessions, names of the mediators, the disposition of the mediation and the date mediation concluded.

Subchapter F. PROCEDURE FOR CONDUCTING IN CAMERA REVIEW

§ 77.101. Ordering the in camera inspection of records.

- (a) The appeals officer may order an in camera inspection of the records sought at the appeals officer's discretion, on the motion of a party or at the direction of a court on remand. This order is not appealable.

- (b) An appeals officer's grant of a request for in camera inspection may be conditioned on the requester's agreement to an extension of time to issue a final determination.
- (c) The appeals officer shall issue an order directing the party to submit the records in accordance with the requirements of this subchapter.

§ 77.102. Submitting records to the OOR for in camera inspection.

- (a) Submissions of records for in camera inspection must include:
 - (1) A consecutively Bates numbered copy of the records contained in an envelope marked "CONFIDENTIAL" and labeled with the docket number of the appeal.
 - (2) An in camera inspection index referencing each record submitted.
- (b) The in camera inspection index must contain the following information, unless otherwise directed by the appeals officer:
 - (1) The Bates number or range of numbers on which the record appears.
 - (2) The date of the record.
 - (3) A description of the type of record (email, memo, text message).
 - (4) The name and title of the author and the recipient of the record (agency attorney, official, employee, or contractor).
 - (5) A general description of the subject matter of the record.
 - (6) A citation to the legal basis justifying the withholding of the record or redaction from the record.
- (c) The in camera inspection index and records submitted for in camera inspection are provided to the OOR by one of the following methods, unless the records total 100 pages or more:
 - (1) Regular mail.
 - (2) OOR appeal portal
 - (3) Certified mail.
 - (4) Email.
 - (5) Hand delivery.
 - (6) Other forms of electronic transmission at the OOR's discretion.
- (d) If the records total 100 pages or more, the records shall be submitted in a format approved by the OOR.
- (e) The party shall provide a copy of the in camera inspection index to all parties to the appeal.
- (f) The party shall certify that the records submitted for an in camera inspection are true and correct and complete copies of the records at issue in the appeal and that the in camera inspection index accurately describes the content of the records. If a hearing is held, the party shall make available for direct and cross-examination the official who certified the accuracy

of the records submitted for in camera inspection and the contents of the in camera inspection index.

§ 77.103. Receiving records submitted for in camera inspection.

- (a) The OOR will record the date records are received for in camera inspection.
- (b) The appeals officer will verify that the party submission complies with § 77.102 (relating to submitting records to the OOR for in camera inspection). If the submission fails to comply, the appeals officer may return the records, decline to inspect them or otherwise act on the request for in camera inspection on the basis of justice, fairness and the expeditious resolution of the appeal.
- (c) The appeals officer will confirm the receipt of records submitted for in camera inspection by:
 - (1) Informing the parties of the date the records were received by the OOR.
 - (2) Certifying that neither the records submitted for an in camera inspection, nor their contents, will be disclosed, except as provided by court order or this subchapter.

§ 77.104. Maintaining the confidentiality of records submitted for in camera inspection.

- (a) Records submitted for in camera inspection will not be subject to public access.
- (b) The appeals officer will store records submitted for an in camera inspection and a copy of the in camera inspection index in a secure OOR file.
- (c) The appeals officer may print copies of the records for review and immediately destroy and discard duplicate copies after the need for review has passed. The appeals officer will secure all printed records in the same manner as records submitted to the OOR in a nonelectronic format.
- (d) A person authorized to review records submitted for in camera inspection may take notes referring to specific information contained in those records and secure the notes with the records submitted for in camera inspection.
- (e) References to a specific record submitted for in camera inspection, or the content of the record, in the final determination is limited to all of the following:
 - (1) The Bates number printed on the record.
 - (2) Reference to the generic descriptions or characterizations as set forth in the in camera inspection index.
 - (3) If the in camera inspection index provides an insufficient description of the records, a generic description or characterization of the in camera records themselves.

- (f) At public hearings, the appeals officer will not allow any mention of the specific contents of records submitted for an in camera inspection. Identification of these records may be made by reference to the assigned numbers endorsed on the records or by reference to generic descriptions or characterizations as set forth in the in camera inspection index or in other public records.

§ 77.105. Submitting records submitted for in camera inspection as part of the certified record for appellate review.

- (a) The OOR's official record certified to the court will include records submitted for in camera inspection. The OOR will submit the records submitted for in camera inspection to the court, under seal, in a separate supplemental certified record.
- (b) The OOR will continue to retain records submitted for an in camera inspection in the OOR's secure file apart from the remainder of the record on appeal until delivery of the certified record to the court.

§ 77.106. Returning records submitted for in camera inspection.

- (a) The OOR will notify the party of the OOR's intent to return records submitted for in camera inspection when one of the following occurs:
 - (1) If the final determination has not been appealed, 45 calendar days from the issuance of the final determination.
 - (2) If a final determination is appealed to a court and the OOR does not submit a certified record, 45 calendar days from the court order concluding the appellate proceedings related to a final determination.
 - (3) If a final determination is appealed to a court and the OOR submitted a certified record, when the court remits the record of its proceedings involving records submitted for an in camera inspection to the OOR.
- (b) The OOR will return records submitted for in camera inspection by providing a copy of the in camera inspection index and all records submitted for in camera inspection contained in a sealed envelope marked "CONFIDENTIAL" and labeled with the docket number of the appeal.
- (c) The official taking possession of the records on behalf of the party shall sign a receipt for the records returned.

§ 77.107. Disposing of abandoned in camera records.

If the OOR cannot return records submitted for in camera inspection, the OOR may securely dispose of those records after 45 calendar days following the OOR's notification of the party as set forth in § 77.106 (relating to returning records submitted for in camera inspection).

Subchapter G. PROCEDURE FOR HEARINGS AND CONDUCTING HEARINGS

§ 77.121. Decision to hold a hearing.

The appeals officer may decide to hold a hearing after consultation with the Executive Director and Chief Counsel. The decision of whether to hold a hearing is not subject to appeal under section 1102 of the RTKL (65 P.S. § 67.1102(a)(2)). If the appeals officer requires additional time, the appeals officer may obtain a requester's agreement for additional time to issue a final determination.

§ 77.122. Procedure for scheduling a hearing.

- (a) Hearings are open to the public.
- (b) If the appeals officer elects to hold a hearing in accordance with § 77.121 (relating to decision to hold a hearing), the OOR will take the following actions:
 - (1) The OOR will publish the time, date and location of the hearing in the *Pennsylvania Bulletin*, along with a description of the subjects and issues associated with the hearing, before the date fixed in the notice.
 - (2) The OOR will send notice of the time, date and location of the hearing, along with a description of the subjects and issues associated with the hearing, to the parties.
 - (3) The OOR will post a notification of the time, date and location of the hearing, along with a description of the subjects and issues associated with the hearing, on its website.
- (c) The appeals officer may decide to hold the hearing at any location designated by the OOR, including by videoconference or teleconference if accessible to all parties (in this event, the address of all locations where the hearing may be viewed or heard will appear on the OOR publication notice). If a hearing will be conducted by videoconference, the appeals officer will arrange for the submission of any documentary evidence before the hearing and distribute copies of any materials to the parties.
- (d) Subsections (a)—(c) supplement 1 Pa. Code § 35.102 (relating to hearing calendar).

§ 77.123. Hearing calendar.

- (a) The OOR will maintain a hearing calendar of all appeals set for hearing and will post the calendar on its website. The OOR, in its discretion with or without motion, may at any time, with due notice to the parties, advance or postpone any proceeding on the hearing calendar.
- (b) The OOR will include on the hearing calendar a description of the records and issues subject to the appeals set for hearing.
- (c) Subsections (a) and (b) supplement 1 Pa. Code § 35.102 (relating to hearing calendar).

§ 77.124. Prehearing conference.

- (a) The appeals officer may schedule a prehearing conference.
- (b) During a prehearing conference, the following may be considered:
 - (1) Simplification of the issues.
 - (2) Exchange and acceptance of service of exhibits proposed to be offered in evidence.
 - (3) Obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents that might properly shorten the hearing.
 - (4) Providing the opportunity for the parties to submit witness and document lists, stipulations and settlement proposals.
 - (5) Limitation of the number of witnesses.
 - (6) Discovery or production of data.
 - (7) Other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.
- (c) Prehearing conferences will not be open to the public.
- (d) Subsections (a)—(c) supplement 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

§ 77.125. Issuance of subpoenas.

- (a) Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the OOR on its own motion, are issued only on application in writing to the assigned appeals officer, except that during a hearing the application may be made orally on the record before the appeals officer, who is hereby given authority to determine the relevancy and materiality of the evidence sought and to issue the subpoenas accordingly. The appeals officer and parties shall adhere to the rules for issuance, service and witness fees as set forth in 1 Pa. Code § 35.142 (relating to subpoenas) as adopted in these regulations.
- (b) Subsection (1) supplements 1 Pa. Code § 35.142.

§ 77.126. Depositions.

Appeals officers and parties shall adhere to 1 Pa. Code §§ 35.145—35.152 (relating to depositions). A deposition may not be taken except on approval of the appeals officer.

§ 77.127. Purpose of hearing.

The purpose of the hearing is to provide parties an opportunity to present evidence and argument, if permitted by the appeals officer, on issues to be considered by the appeals officer.

§ 77.128. Authority delegated to appeals officers.

- (a) Appeals officers designated by the Executive Director to preside at hearings have authority to:
- (1) Regulate the course of hearings, including the scheduling, subject to the approval of the Executive Director, and the recessing, reconvening and adjournment as provided in 1 Pa. Code § 35.102(b) (relating to hearing calendar).
 - (2) Administer oaths and affirmations.
 - (3) Issue subpoenas.
 - (4) Rule on offers of proof and receive evidence.
 - (5) Take or cause depositions to be taken.
 - (6) Hold appropriate conferences before or during hearings.
 - (7) Dispose of procedural matters and motions.
 - (8) Take other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the OOR functions and the regulations and policies of the OOR.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

§ 77.129. Recording of hearings.

- (a) Hearings will be recorded by a stenographer or court reporter.
- (b) The recording will be transcribed, and a transcript of the proceedings will be included as part of the certified record of the appeal.
- (c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.131—35.133 (relating to transcript).

§ 77.130. Order of presentation.

- (a) The agency shall open the hearing and present any evidence and witnesses in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), followed by the requester who may also present evidence and witnesses.
- (b) All witnesses will be sworn.
- (c) All witnesses are subject to reasonable cross examination.
- (d) The appeals officer will decide whether to hear closing arguments and, if so permitted, the requester shall go first, followed by the agency, which has the burden of proof under the RTKL.
- (e) If a direct interest participant is involved, the direct interest participant may present evidence and witnesses after the agency, and before the requester.
- (f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.125 and 35.126 (relating to order of procedure; and presentation by the parties).

§ 77.131. Limiting the number of witnesses.

- (a) The appeals officer has the discretion to limit the number of witnesses or the time for testimony on a particular issue in the course of the hearing.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.127 (relating to limiting number of witnesses).

§ 77.132. Written testimony.

The appeals officer may permit any party to offer testimony in written form. Written testimony is received in evidence with the same force and effect as though it were stated orally by the witness who has given the evidence, provided that the witness will be present at the hearing at which testimony is offered, shall adopt the written testimony under oath, and will be made available for cross examination as directed by the appeals officer. Before its admission, the written testimony will be subject to objections by parties.

§ 77.133. Stipulations.

Appeals officers and parties shall adhere to 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

§ 77.134. Evidence.

Appeals officers and parties shall adhere to 1 Pa. Code §§ 35.161–35.169 (relating to evidence).

§ 77.135. Procedure following hearing.

At the conclusion of the hearing, the appeals officer will permit copies of the hearing transcript to be delivered to the parties and will establish a briefing schedule for the parties to submit briefs and reply briefs. At the conclusion of the briefing schedule, the appeals officer will certify the record of the proceedings. Participants desiring copies of the transcript may obtain copies from the official reporter on payment of the fees fixed therefor. The appeals officer will issue a final determination within the time frame set by section 1101(b)(1) of the RTKL (65 P.S. § 67.1101(b)(1)).

Subchapter H. PROCEDURE FOR FILING PETITIONS FOR RECONSIDERATION

§ 77.151. Petitions for reconsideration.

- (a) The OOR will accept petitions for reconsideration of its final determination. The application shall be filed within 15 calendar days after the issuance of a final determination. The application must be made by petition, stating specifically the grounds relied on.
- (b) With respect to petitions of reconsideration, the OOR will follow the procedures in 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration), except as otherwise provided in this subchapter.

- (c) The filing of a petition for reconsideration or the OOR's granting of a petition for reconsideration does not toll the time period for seeking judicial review under sections 1301 and 1302 of the RTKL (65 P.S. §§ 67.1301 and 67.1302).
- (d) The OOR may deny a petition for reconsideration in writing. Otherwise, a petition for reconsideration will be deemed denied if no response is made within 15 calendar days after it is filed.
- (e) If the OOR grants a petition for reconsideration, the respondent to the petition may file a response in the nature of an answer within 15 calendar days of the issuance of the order granting reconsideration.
- (f) The OOR will not accept additional evidence if a petition for reconsideration is granted.
- (g) The OOR will issue a final determination on reconsideration within 45 calendar days of the deadline for the respondent's response, if any.

Subchapter I. FINAL DETERMINATIONS AND JUDICIAL REVIEW

§ 77.161. Final determinations.

- (a) The appeals officer will issue a final determination and parties with access to the OOR appeal portal will have immediate access to the final determination. All other parties will receive a copy of the final determination within 30 calendar days of docketing the appeal unless the requester has agreed to allow the OOR additional time to issue the final determination or as permitted by §§ 77.74 (relating to third party notice) and 77.76 (relating to an appeals officer's extension of the final determination deadline).
- (b) The final determination will include:
 - (1) The docket number of the appeal.
 - (2) The name of the appeals officer.
 - (3) The names of the parties.
 - (4) A factual summary of proceedings before the OOR.
 - (5) A written explanation containing findings of fact and conclusions of law.
 - (6) A statement explaining the agency action required to comply with the final determination and the date by which the agency must comply.
 - (7) The date of issuance and mailing to the parties.

- (c) The OOR appeal portal provides immediate access to a final determination that has been issued by an appeals officer. The appeals officer will send the final determination by email only and use delivery receipt, if a party has provided an email address. The appeals officer will maintain a copy of the delivery receipt in the appeal file. This will satisfy the requirements of section 1101(b)(1) of the RTKL (65 P.S. § 67.1101(b)(1)) If the parties provide a mailing address and request a hard copy, the final determination will be mailed to the parties via first class mail.
- (d) The appeals officer will include a final determination in the official file after the conclusion of the appeal.
- (e) The appeals officer will issue an amended final determination with correspondence describing the changes to the amended final determination, if the original order contains a typographical error which does not substantively impact the outcome of the appeal. The issuance of an amended final determination will not alter the deadline for judicial appeal in the issuance of the original final determination.

§ 77.162. Vacating a final determination.

- (a) The OOR may amend or vacate a final determination based on a clerical or procedural mistake arising from oversight or omission whenever one is found in a final determination. The OOR may do so on motion or on its own accord, with or without notice. But after an appeal has been docketed in an appellate court and while it is pending, a final determination can only be amended with the appellate court's leave.
- (b) The OOR will act on a motion to vacate within seven business days of its receipt of the motion to vacate or the final determination deadline for the appeal, whichever is earlier. If the OOR fails to act on a motion to vacate by this deadline, the motion to vacate is deemed denied.
- (c) If the motion to vacate is granted, the Appeals Officer may establish a submission schedule or take other appropriate actions. The final determination will issue by the last final determination deadline, unless the deadline is extended in accordance with this part.

§ 77.163. Effect of final determinations and non participation.

- (a) If a final determination orders the release of records, and the requester, agency or direct interest participant does not appeal the final determination under section 1301 or 1302 of the RTKL (65 P.S. §§ 67.1301 and 67.1302), the agency shall grant access to the records to the requester by the timeframe specified in the final determination.
- (b) Failure to provide access to the records in accordance with a final determination may subject the agency to a finding of bad faith or sanctions and penalties as permitted by the RTKL and relevant case law.
- (c) Failure to respond to a request for records and a subsequent appeal in accordance with the RTKL may subject the agency to a finding of bad faith or sanctions and penalties as permitted by the RTKL and relevant case law.

(d) Subsections (a) and (b) supersede 1 Pa. Code § 35.251 (relating to reports of compliance).

§ 77.164. Final determinations.

Any final determinations issued by an agency appeals officer shall be forwarded to the OOR.

§ 77.165. Judicial review of final determinations.

- (a) A final determination is subject to judicial review.
- (b) Within 30 calendar days of the issuing date of the final determination of the appeals officer or the date an appeal is deemed denied, a party may file a petition for review or other document as might be required under the rule of court with either:
 - (1) Commonwealth Court, if the decision involves a Commonwealth agency.
 - (2) The Court of Common Pleas for the county in which the local agency is located, if the decision involves a local agency.
- (c) Notice of appeals to reviewing courts under section 1301 or 1302 of the RTKL (65 P.S. §§ 67.1301 and 67.1302) is served on all parties and the OOR, which will have an opportunity to respond in accordance with applicable court rules. The OOR will also be served with notice of any subsequent appeal to an appellate court.
- (d) The OOR may not be named a party to an appeal filed under section 1301 of the RTKL, involving appeals to Commonwealth Court, or section 1302 of the RTKL, involving appeals to local courts of common pleas.
- (e) The filing of an appeal under this section shall stay the release of the documents at issue until a decision or order of the court is issued.

§ 77.166. Record on appeal.

- (a) The record consists of the request, the agency's response, the appeal filed with the OOR under section 1101 of the RTKL (65 P.S. § 67.1101), any information or evidence submitted to the OOR and considered by the assigned appeals officer, the hearing transcript, if any, and the final determination.
- (b) Records reviewed by the appeals officer in camera will not be part of the record except as provided by § 77.125 (relating to submitting records submitted for in camera inspection as part of the certified record for appellate review).

Subchapter J. FEES

§ 77.171. OOR to publish official fee schedule.

- (a) Under section 1310(a)(8) of the RTKL (65 P.S. § 67.1310(a)(8)), the OOR shall establish and post on its website an official fee schedule.
- (b) An agency and a requester may enter into a contract, memorandum of understanding, or other agreement that provides an alternative fee arrangement to the fees authorized by the OOR. Any agreement is public.

§ 77.172. Appealing fees.

Any fee charged by an agency to provide records responsive to a request may be appealed to the OOR.