



## Agency RTKL Policy Adoption Guidelines

Updated June 16, 2020

While agencies are not required to promulgate regulations and/or policies under the Right-to-Know Law, 65 P.S. § 67.101, *et seq.* (“RTKL”), they may do so in accordance with Section 504 of the RTKL (an agency “may promulgate regulations and policies necessary for the agency to implement this Act”). Agencies may want to consider, in consultation with counsel, adopting or updating regulations and policies regarding the RTKL which are specific to each individual agency. Section 504(b) of the RTKL requires agencies to post any such regulations at the agency’s physical location and on the agency’s website, if it maintains one.

The Office of Open Records (“OOR”) has published a sample Agency RTKL Policy [on its website](#). The OOR will also, upon request and time permitting, review proposed regulations and policies and offer input. To request such a review, [contact the OOR](#).

### **Prohibitions in the RTKL**

Section 1308 of the RTKL prohibits the adoption of regulations or policies which include any of the following:

- A limitation on the number of records which may be requested or made available for inspection or duplication.
- A requirement to disclose the purpose or motive in requesting access to records.

### **Some issues agencies should consider**

Before adopting or updating regulations and/or policies, agencies should consider a number of issues, including:

- *Alternate Agency Open Records Officer (“AORO”)*. Appointing an alternate AORO to respond to RTKL requests in the event the AORO is unavailable is a good practice.
- *Posting AORO contact, request and appeal information*. Section 504(b) of the RTKL

requires that an agency post the following information at the agency and on the agency's website, if the agency maintains a website. An agency must post: (1) Contact information for its AORO; contact information for the OOR or another applicable appeals officer; a form which may be used to file a RTKL request; and regulations, policies and procedures related to the RTKL. A [sample Agency RTKL Information Poster](#) is available on the OOR website.

- *Posting public records.* Making public records available on an agency's website tends to reduce the volume of RTKL requests. If a record is available on an agency's website, Section 704 of the RTKL allows the agency to point requesters to the website rather than providing copies of the record. (If a requester cannot access the website, they may request that the agency convert the record to paper.) Spelling out which records will be posted to the website gives guidance to both agency personnel and requesters.
- *Agency-specific request form.* The OOR's Standard Right-to-Know Request Form, [available on the OOR website](#), must be accepted by all Commonwealth and local agencies. However, agencies may also wish to create custom forms more tailored to their needs.
- *Requests accepted.* The RTKL permits requests to be submitted in person, by email, by postal mail, and by facsimile. Additionally, agencies may want to decide whether they will process and fulfill verbal requests or written anonymous requests as RTKL requests – generally, there is no right of appeal from an agency's response to a verbal or anonymous request under the RTKL. *Note: Agencies are permitted to provide records without requiring a formal RTKL request. For example, many agencies make meeting minutes and budget documents available immediately upon request. This can save the agency a significant amount of time.*
- *Trade secrets.* Section 707(b) of the RTKL requires agencies to notify third parties of a RTKL request if the third party provides the record to the agency with a written statement that the record contains a trade secret or confidential proprietary information. It can be helpful to include a reminder of this provision in a RTKL regulation or policy.
- *Fee waiver.* Agencies are permitted to waive fees at their discretion. For example, some agencies routinely waive fees of less than \$5.00, and some agencies waive fees when the request is made in the public interest (e.g., by an academic researcher or the media).
- *Record retention policy.* Adopting a good record retention policy and posting it online lets requesters know what records are no longer available and may reduce the volume of RTKL requests. It's good practice to include references to the retention policy in a RTKL regulation or policy.

- *Maintain all potentially responsive records once a request is made.* Once a RTKL request is received, the agency must maintain all potentially responsive records until the request is fulfilled and through any subsequent appeals. The OOR encourages agencies to include language to this effect in a RTKL regulation or policy. Although the RTKL does not explicitly impose this requirement on agencies, Section 1305 of the RTKL allows courts to impose civil penalties if an agency operates in bad faith. The Lackawanna County Court of Common Pleas held that an agency had “a mandatory duty” to preserve records after receiving a RTKL request in *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), and the Commonwealth Court outlined the elements of a good faith search and the requirements to retain records responsive to a request in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018).