



## **RTKL Guide for Law Enforcement Agencies**

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Law enforcement agencies are generally no different than other agencies under the Right-to-Know Law, 65 P.S. § 67.101, *et seq.* (“RTKL”), but there are some exceptions. This guide was designed by the Office of Open Records (“OOR”) to help law enforcement agencies understand how the RTKL applies to them.

### **Agency Open Records Officer (AORO)**

The RTKL requires every agency to have an AORO. As a practical matter and particularly at a local level, a law enforcement agency can have its own AORO or it can use the AORO for the agency it serves. For example, the Smith Township Police Department could use the AORO appointed by Smith Township rather than having its own AORO. The RTKL is flexible in this regard, and both approaches are used in numerous law enforcement agencies across Pennsylvania.

### **Timeline for responding to requests**

As with all other agencies, law enforcement agencies must respond to a RTKL request in writing within five business days. The response must (1) grant the request and provide the records; (2) deny the request in whole or in part, cite the reason(s) for the denial, and outline the appeal process; or (3) invoke a 30 calendar day extension. More detailed information about this timeline is available in the OOR’s Agency Open Records Officer Guidebook [available on the OOR website](#).

### **General presumption of openness**

Under the RTKL, records of state and local agencies in Pennsylvania are presumed to be available to the public. The RTKL includes 30 exemptions, allowing agencies to withhold certain records or portions of records. Other laws and regulations may also include exemptions or require that records be kept confidential.

Law enforcement agencies should specifically be aware of [Pennsylvania's Criminal History Record Information Act](#), 18 P.S. § 9101, *et seq.* (“CHRIA”), which limits the dissemination of certain information by criminal justice agencies (including law enforcement agencies).

### **RTKL exemptions which commonly apply to law enforcement records**

Section 708(b)(16) of the RTKL allows agencies to withhold records “relating to or resulting in a criminal investigation” including:

- Complaints of potential criminal conduct other than a private criminal complaint.
- Investigative materials, notes, correspondence videos and reports.
- A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
- A record that includes information made confidential by law or court order.
- Victim information, including any information that would jeopardize the safety of the victim.
- A record that if disclosed would do any of the following:
  - Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
  - Deprive a person of the right to a fair trial or an impartial adjudication.
  - Impair the ability to locate a defendant or co-defendant.
  - Hinder the agency’s ability to secure an arrest, prosecution or conviction.
  - Endanger the life or physical safety of an individual.

However, Section 708(b)(16) specifically does not apply to “information contained in a police blotter” as that term is defined in CHRIA. In other words, police blotter information – i.e., “A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.” – is public.

Section 708(b)(17) of the RTKL, which exempts certain records related to noncriminal investigations, can also apply to records held by law enforcement agencies.

Section 708(b)(18) of the RTKL allows an agency to withhold “records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.” Thus, even if an agency withholds certain emergency dispatch records, “time response logs” are available to the public. The term “time response logs” is generally understood to include the following information:

- The time the call was received;
- The time the dispatcher contacted or dispatched the responding unit(s);
- The time the responding unit(s) responded to the dispatch;

- The time the responding unit(s) arrived on the scene;
- The time the responding unit(s) became available; and
- The address of the incident or the street block identifier, the cross street or the mile marker nearest the scene of the incident.

## **Redactions**

Where a record contains both public and nonpublic information, an agency should redact the information not subject to public access. *See* 65 P.S. § 67.706 (providing for redaction of nonpublic information). Information redacted by an agency is considered a denial of access under the RTKL. *Id.* As a result, an agency response where information has been redacted is required to state “[t]he specific reasons for the denial, including a citation of supporting legal authority” for a denial of access through redaction. *See* 65 P.S. § 67.706; 65 P.S. § 67.903(2).

## **Video and audio recordings made by a law enforcement agency (Act 22 of 2017)**

[Act 22 of 2017](#) (specifically, Chapter 67A of the Act) established a new process for requesting audio and video recordings in the possession of law enforcement agencies in Pennsylvania. 42 Pa.C.S. § 67A03. Act 22 applies to individuals seeking “any audio recording or video recording made by a law enforcement agency,” which means the RTKL does not apply to requests for these recordings.

Nothing in Act 22 precludes a law enforcement agency or a prosecuting attorney with jurisdiction from choosing to release an audio or video recording, with or without a written request. [More information about Act 22 is available on the OOR website.](#)

## **Releasing records even if they may be withheld under the RTKL**

The RTKL is not a confidentiality law. Other laws may prohibit the release of specific records; in contrast, the RTKL *allows* agencies to withhold certain records, but it does not require it.

There are times when it is in the public interest to release records which an agency could withhold under the RTKL. The law recognizes this and gives agencies the discretion to do so. Section 506 of the RTKL makes it clear that “an agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying” if all of the following apply:

- Disclosure of the record is not prohibited by federal or state law or regulation, judicial order or decree;
- The record is not protected by a privilege; and
- The agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

### **Charging for records**

The OOR is required by the RTKL to publish a fee schedule, [available on the OOR website](#). As a general rule, agencies may charge up to \$0.25 per page for hard copies of records (8.5 x 11, black and white).

Law enforcement agencies have some statutory authority to charge rates other than those found in the RTKL Fee Schedule. For example, police departments may charge up to \$15 per report for providing a copy of a vehicle accident report. 75 Pa.C.S. § 3751(b)(2). Philadelphia police may charge up to \$25 per copy. *Id.* § 3751(b)(3). State police are authorized to charge “\$5 for each copy of the Pennsylvania State Police full report of investigation.” 75 Pa.C.S. § 1956(b).

### **Appeal process for law enforcement agencies**

Generally, RTKL requests which are denied by an agency can be appealed to the OOR.

However, in cases involving criminal investigative records possessed by a local law enforcement agency, the appeal should be directed to the county District Attorney. This is governed by Section 503(c)(2) of the RTKL, which states: “The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.”