



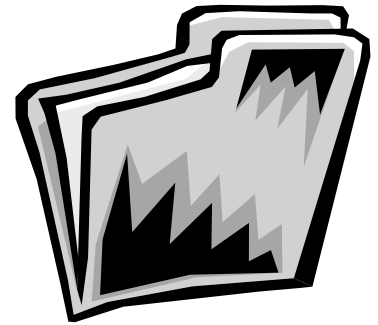
Pennsylvania Open Records or Right-to-Know Law¹

*Pennsylvania General Assembly
Local Government Commission*

Taken together, the Sunshine Act² and the Right-to-Know Law,³ often referred to as the Open Records Law, are intended to provide residents of the Commonwealth with first-hand knowledge of the activities of public agencies taken at meetings and access to contents of public records.

The Right-to-Know Law, originally enacted in 1957 and recently amended extensively by Act 100 of 2002,⁴ specifically deals with “public records.” Commonwealth residents have the right to examine, inspect, and duplicate any public record of a public agency. Two definitions are important to determine the validity of any given request:

- “Agency” - The statute defines “agency” as any office, department, board, or commission of the executive branch, any political subdivision, the Turnpike Commission, the State System of Higher Education, and any authority or similar organization created pursuant to statute to perform an essential government function.



Act 100 added a distinction between “Commonwealth agencies” as defined in the Commonwealth Procurement Code⁵ and all others, defined as “non-commonwealth agencies,” for purposes of response times for requester inquiries.

- “Public Records” – These records include any “account, voucher or contract” that involves agency manipulation of funds or property. It also includes “any minute, order, or decision by an agency fixing the personal or property rights, privileges, immunities, duties, or obligations of any person or group of persons.”⁶

Generally, personnel records, reports, and evaluations are not considered public records. However, a decision of an agency fixing a person’s property right in his or her employ-

¹The Right-to-Know Law discussed herein is not to be confused with the Worker and Community Right-to-Know Act (35 P.S. § 7301 et seq.), an act that, among other things, requires the chemical identification of substances in the community and on employer premises. Federal law dealing with the movement and storage of hazardous materials is also often referred to, colloquially, as the Right-to-Know Law.

²65 Pa.C.S. § 701 et seq. (“Sunshine Act” [Open Meetings Law])

³65 P.S. § 66.1 et seq. (Right-to-Know Law [Open Records Law])

⁴*Id.*

⁵“An executive agency, an independent agency or a State-affiliated entity.” See 62 Pa.C.S. § 103.

⁶65 P.S. § 66.1(2).

(Continued page 38)

ment may bring the contents of a personnel file subject to public review under the law. Also, the records must be those of the *agency itself*; if a single member of an agency prepares or obtains statistics or records as personal research for his own official purposes, they are not public.

Exceptions. The statute provides four exceptions that remove any given document from the definition of “public record”:

- Documents involving the progress of official agency investigations.
- Documents limited in access by statute or judicial action.
- Documents which would prejudice or impair a person’s reputation or personal security, not including their right to privacy.
- Documents which, if disclosed, would precipitate agency loss of Federal funds.

How it Works. A requester, often a member of the media, approaches an agency representative and requests, either verbally or through a written request,⁷ to inspect *specified* documents for any reason. The request must be sufficiently specific, or it may be denied. Depending on its characterization as either “Commonwealth” or “non-commonwealth,” an agency has either ten days or five days to respond to the request,⁸ after which the request is deemed denied if not denied in writing or honored. The written denial of the agency must specify the reason for the denial, including citation of legal authority, information regarding the agency authority that denied the request, and information regarding the appeal process. The agency must make the record available for inspection and duplication by the requester in the medium in which it exists, and is NOT obligated to *prepare* reports or documents or otherwise ‘create’ records. If, however, a public record is available routinely only by electronic means, the agency must provide access to the record at an office of the agency and must, upon request, duplicate the record on paper. An agency may redact portions of a record that are not “public.” Act 100 also adds several provisions providing for reasonable duplication and “enhanced electronic access” charges and limits. Once a request is denied or deemed denied, the requester may file exceptions with the “agency head” for a final agency determination as regards disclosure within 30 days of the date the exceptions were mailed.

Appealing a Denial. After a final agency determination, a requester may appeal to Commonwealth Court, for those inquiries involving Commonwealth agencies, and to either the court of common pleas or the district magistrate for noncommonwealth agency denials.⁹ The

⁷A requester may only avail themselves of the procedural protections and remedies of the statute when making a written request. See 65 P.S. § 66.2(b) (Right-to-Know Law, Section 2(b)).

⁸Non-Commonwealth agencies generally have 5 days to respond to a request to examine documents, while Commonwealth agencies have 10 days. See 65 P.S. §§ 66.3-3, 66.3-4 (Right-to-Know Law, Sections 3.3, 3.4).

⁹The Pennsylvania Supreme Court on December 12, 2002, ordered that “[appeals from noncommonwealth agencies] are hereby assigned to and shall be commenced in the courts of common pleas, pending promulgation of necessary rules of practice and procedure to govern actions in local magisterial districts provided for in said statute.” As of this writing, rules have not been promulgated and appeals before district magistrates are not permitted.

(Continued on page 39)

court may award attorney fees and costs to the prevailing party in appropriate circumstances. Act 100 added provisions relating to criminal and civil sanctions against agency officials who intentionally violate the act or do not comply with court orders under the act.

Summary. A resident may request review of any specific, existing “public” document that is produced by an agency itself. If such a request does not require the agency to provide services beyond allowing inspection, redaction, and a reasonable time to duplicate, the Open Records Law virtually guarantees that it will be granted.



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