

The Open Record Officers' Guide to the Pennsylvania RTKL: Responding to a RTKL Request – Duties and Deadlines

Right to Know Law Blog January 10, 2019

The objective of the Right to Know Law (“RTKL”) is to empower citizens by affording them access to information concerning the activities of their government. Further, this important open-government law is designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.

Despite the laudable objective of open and transparent government, the RTKL recognizes that some records should not be made public. Section 708 of the RTKL contains 30 specific exceptions. In addition, Section 305 of the RTKL recognizes that other records are otherwise protected by privilege (including the attorney-client privilege) and that others are exempt from disclosure under Federal or State law, regulation or judicial order or decree. Future posts will identify and discuss these exceptions, laws and regulations (and decisions interpreting them). For now though, it is enough to recognize that they exist and understand that every record in the agency’s possession should not (and, in some cases, cannot) be made public.

Section 502 of the RTKL mandates that local agencies, like school districts and municipalities, designate an official or employee to act as its Open-Records Officer. Under the RTKL, the Open Records Officer must:

- Note the date of receipt on the written request.
- Compute the day on which the five-day period under section 901 will expire and make a notation of that date on the written request.
- Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled. If the request is denied, the written request shall be maintained for 30 days or, if an appeal is filed, until a final determination is issued under section 1101(b) or the appeal is deemed denied.

In practice, the Open Records Officer is also charged with coordinating the agency’s response to each RTKL Request. When responding to a RTKL request, the agency must make a “good faith effort” to determine if the agency has possession, custody or control of the record.” 65 P.S. § 67.901. This “good faith effort” often falls to the Open Records Officer, who is responsible for ensuring that the agency conducts a search “reasonably calculated to uncover all relevant documents,” and who must ask agency employees and officers whether they have any responsive documents in their possession, custody, or control.

If the agency (including its officers or employees) possesses responsive documents, the Open Records Officer (often in consultation with the agency’s Solicitor) must then determine whether the records are public or exempt. Records are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. See 65 P.S. § 67.305. Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. 65 P.S. § 67.708(a). Similarly, the burden of proof in claiming a privilege from disclosure is on the party asserting that privilege (i.e., the agency).

To further complicate matters, under Section 506(c) of the RTKL, the agency may exercise its discretion and make an otherwise exempt record accessible, unless: 1) disclosure is prohibited by Federal or State law or regulation, judicial order or decree; 2) the record is protected by a privilege; or 3) the public interests in disclosing is outweighed by any individual,

agency or public interest favoring restriction

As set forth above, the agency, its Open Records Officer (and often its Solicitor) have to undertake a significant investigation before releasing records under the RTKL. Unfortunately, under Section 901 of the RTKL, the agency must complete this investigation and respond to a RTKL record request within **five business days** after its Open Records Officer first receives the request. Generally, responses are due a week after receipt of the request because “business days” do not include weekends and holidays when the agency’s offices are closed.

The Courts have provided some relief by clarifying that the clock starts ticking when the Open Records Officer receives the Request and not when the record is submitted/mailed by the Requester, but this is still not a lot of time.

If it is not possible to complete the response within the 5 business-day time frame, Section 902 of the RTKL provides that the agency may take an extension up to 30 days following the allotted five business days. To invoke this right, the Open Records Officer must give the Requester notice within 5 business days of receipt of the Request that the Request is being reviewed, the reason for review and a reasonable date that a response is expected to be provided. Acceptable reasons for review include:

- the request for access requires redaction of a record in accordance with section 706;
- the request for access requires the retrieval of a record stored in a remote location;
- a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
- a legal review is necessary to determine whether the record is a record subject to access under this act;
- the requester has not complied with the agency’s policies regarding access to records;
- the requester refuses to pay applicable fees authorized by this act; or
- the extent or nature of the request precludes a response within the required time period.

The most common reasons for taking an extension are: 4) the necessity for legal review (*e.g.*, determine whether records are privileged or if any exceptions/exemptions apply); and 7) the extent or nature of the request precluding response within the required time period (*e.g.*, the size of the request precludes a timely response).

If the date of the response is expected to be beyond 30 days, the Request will be deemed denied unless the Requester has agreed to an extension in writing.

Hopefully, this post provides some insight into the Open Records Officer’s duties upon receiving a RTKL Request and the deadlines that he or she must comply with when responding to the Request. Open Records Officers have a difficult, but important job. Future posts will hopefully make this job a bit easier by providing helpful guidance on the RTKL.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.

Keywords: RTKL; “Open Records Officer”; Duties; Deadlines; Extension; “good faith”; 306; 502; 506(c); 708; 901; 902