

Failure to Use the Proper RTKL Request Form (Section 703 of the RTKL) – Denying Requests

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The Right to Know Law (“RTKL”) provides that a requester may submit a request in person, by mail, by e-mail or facsimile. 65 P.S. § 67.703. While the RTKL does not require the use of any specific form, an agency may promulgate regulations and policies to govern its administration of the RTKL and these regulations may require the use of a specific form. See 65 P.S. § 67.504. In addition, agencies must accept the Office of Open Record’s Standard Right-to-Know Law Request Form .

The OOR has held that an agency that has a posted policy requiring the use of a specific form may deny access to the requested records where the requester fails to use the required form, provided that the agency timely responds to the request notifying the requester of the policy.

Accordingly, to reject a request on the basis that the requester failed to use the proper form, the Open Records Officer must confirm that the agency has a posted public policy requiring the use of a specific form. For example, in *Donahue v. City of Hazleton*, AP 2013-1284, the OOR held that an agency cannot deny a request for failure to use a form when the agency’s policy not properly posted on the agency’s website.

If there is a properly posted policy, the Open Records Officer must then deny the request promptly. While the OOR has not set forth a specific time frame to deny a request on this basis, it has held that the denial must come within the initial five business day response period. In *Donahue v. Hazleton Area Sch. Dist.*, AP 2013-1702, the OOR held that that the agency could not use its policy as a basis for denying a request because the District deemed denied the request (i.e., did not respond to the Request within the 5 business day response period), rather than timely responding to the request by notifying the requester of its policy. On the other hand, in *Burda v. Montgomery County*, AP 2018-1338, the OOR found that the agency was permitted to deny a request for failing to use the proper form when, on the same day the Request was submitted, the County informed the Requester of his failure to use the proper form and directed him to its website, where its policy is posted. Therefore, a denial should be immediate, but no later than five business days from receipt of the request.

Therefore, to deny a request for failing to use the proper form, the Open Record Officer should make sure that the agency has a publically posted policy requiring certain forms and, if there is a policy, promptly deny the request, inform the requester that he or she must use the proper form and direct the requester to the publically posted policy.

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.