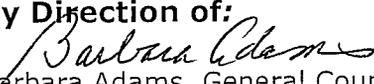


MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Right-to-Know Law	Number: 205.36 Amended
Date: November 20, 2008	By Direction of:  Barbara Adams, General Counsel
Contact Agency: Governor's Office of General Counsel, 717-783-6563	

This directive amends and restates policy and procedures for agency compliance when responding to requests made after January 1, 2009, pursuant to the *Right-to-Know Law*, 65 P.S. §§ 67.101-67.3104, for access to or copies of public records. Marginal dots are excluded due to major changes.

- 1. PURPOSE.** To provide all agencies under the jurisdiction of the Governor with guidance and instructions concerning their receipt of and response to requests for records pursuant to the *Right-to-Know Law*, 65 P.S. §§ 67.101-67.3104 (RTKL), after January 1, 2009.
- 2. SCOPE.** This directive is applicable to all agencies under the Governor's jurisdiction. This directive does not apply to policies developed by individual agencies relating to release of records not required to be released pursuant to the RTKL.
- 3. OBJECTIVE.** To ensure that all agencies under the Governor's jurisdiction are complying in a timely and appropriate manner to record requests made under the RTKL.
- 4. DEFINITIONS.** When used in this directive, the terms defined in the RTKL shall have the meanings given to them in the RTKL. Other terms used in this directive have the following meanings:
 - a. Act or RTKL.** Act 2008-03 P. L., 65 P.S. §§ 67.101-67.3104, enacted on February 14, 2008.
 - b. Agency Open Records Officer or AORO.** The official or employee designated by the agency head to receive and respond to RTKL requests. Responses to RTKL requests by the AORO shall constitute action of the agency.

- c. Agency Records Coordinator.** The employee appointed by the agency head according to guidelines provided by *Manual 210.7, State Records Management Manual*, to have agency-wide responsibility for managing and coordinating the agency's records management program.
- d. Appeals Officer.** An attorney from the Office of Open Records who reviews an appeal from an agency denial of a written request for access.
- e. Business day.** Any day other than a Saturday or Sunday, except those days when the offices of the agency are closed for all or part of a day:

 - (1) due to a state holiday;
 - (2) pursuant to *Management Directives 530.17, Partial and Full Day Closings of State Offices* and *Management Directive 505.7, Personnel Rules, Section 8.7*;
 - (3) due to natural or other disaster; or
 - (4) due to the request or direction of local, state, or federal law enforcement agencies or officials.
- f. Deemed denied.** The denial of a request by means other than a verbal or written response. A request is deemed denied if one of the following conditions occurs, subject to extensions agreed to by the requester:

 - (1) the agency receiving a written RTKL request fails to respond within the initial five business day period specified in the Act for response to RTKL requests;
 - (2) the agency extends the five business day period, as permitted by the RTKL, but then fails to respond by the end of that extended period.
- g. Email inbox.** The inbox that receives e-mail sent to an agency's e-mail address for RTKL requests.
- h. Interim response.** A written response from an agency to a requestor indicating that more than five business days will be required for a final response, due to specified circumstances.
- i. Mailing date.**

 - (1) The date affixed to an agency response to a RTKL request, which is to be the date the response is deposited in the United States mail; or,
 - (2) For a person submitting a RTKL request,
 - (a) the date of the postmark on the envelope transmitting the RTKL (if the postmark is illegible, the mailing date is deemed to be the first calendar day that immediately precedes the date on which the request is received and that is not a Saturday or Sunday or a federal holiday);

- (b) the transmission date affixed to a facsimile;
 - (c) the date stamp affixed by the agency to a RTKL request delivered by hand; or
 - (d) the transmission date affixed to an e-mail.
- j. OOR.** The Office of Open Records, which is established in Department of Community and Economic Development (DCED), under the RTKL.
- k. Records custodian.** Any person having custody, possession or control of a record.
- l. Records Legal Liaison.** The agency attorney designated by the agency Chief Counsel to provide legal guidance to the AORO and Agency Records Coordinator on the agency's response to a RTKL request.
- m. Redaction.** The eradication of a portion of a record while retaining the remainder.
- n. RTKL request.** A written or verbal request for a record that is submitted to an agency and which invokes the Act.
- o. Standard RTKL Form.** The RTKL request form published by the Office of Open Records, which all agencies must accept, or by an agency for use in RTKL requests to that agency. *See Office of Open Records website, at: <http://openrecords.state.pa.us>*
- p. Sensitive security information.** Information exempt from disclosure pursuant to *65 P.S. §67.708 (b) (1), (2), (3) and (4)*; and information related to the expenditure of funds from the U.S. Department of Homeland Security, the U.S. Department of Defense or other federal or state funds expended for homeland security, national defense, law enforcement or other public safety activities, including public health preparedness; or information related to the expenditure of funds to ensure the security of public utilities, infrastructure or other essential public resources.
- q. Website.** Each agency's publicly accessible website designated for use for RTKL purposes.
- 5. POLICY.** *Act 2008-03 P. L., 65 P.S. §§ 67.101-67.3104*, enacted on February 14, 2008, and made effective for requests filed on or after January 1, 2009, repealed the *Act of June 21, 1957 (P. L. 390, No. 212)*, commonly referred to as the "*Right-to-Know Law*," *65 P. S. §§ 66.1-66.9*. *Act 3* states that it shall be known and cited as, the "*Right-to-Know Law*". This new law (RTKL) is significantly different from the previous one in many respects, including: the definition of a "public record" is expanded; time limits for agency response to written requests are shortened; requests by e-mail are permitted; an Office of Open Records is established; and specific exemptions are added.

It is essential that all agencies under the Governor's jurisdiction respond to requests for access to public records in a timely, efficient and legally appropriate manner in order to assure the ability of Pennsylvania residents to exercise their right of access to public records under the RTKL. The response to requests received by all agencies under the Governor's jurisdiction should be uniform and consistent. The RTKL provides for the imposition of civil penalties against agencies and public officials who do not comply with the Act and are found to have acted in bad faith. In addition, if a requester prevails in an appeal to the Commonwealth Court, the RTKL permits the court in certain instances to award attorney fees to the requester, to be paid by the agency.

6. RESPONSIBILITIES.

a. Agencies shall:

- (1)** Establish at least one RTKL office. If an agency establishes more than one RTKL office, the agency shall establish written policies governing the respective powers and responsibilities of its various RTKL offices. Each agency shall staff and equip each RTKL office in such manner as to assure the prompt and efficient handling of RTKL requests.
- (2)** Designate a management level employee of the agency to be the agency's AORO and may designate a deputy AORO to perform the duties of the AORO in the absence of, or as directed by, the chief AORO. Working with the Agency Records Coordinator and Records Legal Liaison, the AORO shall receive RTKL requests submitted to the agency; direct requests to other appropriate persons, including parties with whom the agency has contracted to perform a governmental function; track the agency's progress in responding to RTKL requests; redirect a RTKL request to another agency when appropriate and be responsible for the issuance of interim and final responses to RTKL requests.
- (3)** Establish written policies and may promulgate regulations necessary to implement the Act.
- (4)** Post the following information at the agency and on the agency's website:
 - (a)** The name of the AORO.
 - (b)** The address to which RTKL requests should be mailed or delivered.
 - (c)** The RTKL facsimile number and e-mail inbox address for submission of RTKL requests.
 - (d)** The Office of Open Records RTKL Form and any agency form for submission of a RTKL request.
 - (e)** Any policies, procedures and regulations of the agency relating to the RTKL.
 - (f)** Applicable duplication fees established by the Office of Open Records posted on its website at <http://openrecords.state.pa.us>.

(g) Contact information for the OOR, including the address, website and e-mail address and telephone number:

(h) Other fees established by the agency as permitted, including:

1 Reasonable and Necessarily Incurred Costs. An agency may assess a reasonable fee for necessary redaction (including cost of labor) of records, search and retrieval, and other costs necessarily incurred in the production of the public records. However, no charge may be made for an agency or legal review of the record to determine whether the record is a public record that is subject to production.

2 Certified Copies. An agency may assess a reasonable fee for providing certified copies in response to a request for certified copies.

3 Transcripts of administrative proceedings.

(i) Prior to adjudication becoming "final, binding and non-appealable," transcripts shall be provided to the requester by the agency stenographer or a court reporter, in accordance with the published procedure of the agency or an applicable contract. The stenographer or court reporter is permitted to charge the regular fees for this service.

(ii) Following an adjudication becoming "final, binding and non-appealable," a request for the transcript shall be treated like any other request for a record and fees will be assessed according to the schedule established by the Office of Open Records.

4 Enhanced Electronic Access. With the approval of the Office of Open Records, an agency may establish user fees if the agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester.

b. Records Legal Liaison. The Chief Counsel of each agency shall designate a Records Legal Liaison.

c. Office of Open Records. The Executive Director is appointed by the Governor. The responsibilities of the Office of Open Records include:

(1) Hearing appeals concerning denials or deemed denials of a RTKL request by Commonwealth agencies.

(2) Developing a request form to be accepted by all Commonwealth agencies. See Office of Open Records website at: <http://openrecords.state.pa.us>

- (3) Setting fees for duplication, printing and other costs for Commonwealth agencies responding to requests and conducting biannual reviews of the fees being charged.
- (4) Providing information relating to the implementation and enforcement of the RTKL.
- (5) Issuing advisory opinions to agencies and requesters. However, any agency whose legal services are provided through the Office of General Counsel (OGC) must have a request to the OOR for an advisory opinion reviewed in advance by OGC.
- (6) Providing training courses to agencies and employees regarding the Act and the State's Sunshine Act.
- (7) Establishing a mediation program.
- (8) Maintaining an internet website that includes information relating to fees, advisory opinions, decisions rendered and the contact information for all AOROs.
- (9) Reporting annually to the General Assembly and the Governor on the activities of the office.

7. PROCEDURES.

a. RTKL Requests.

- (1) **Verbal and anonymous RTKL requests.** Agencies may fulfill verbal requests made under the Act, including anonymous requests, but the requester cannot appeal a denial unless the request is in writing.
- (2) **Written RTKL requests.** An agency shall accept RTKL requests submitted in person, by mail, facsimile, e-mail, or to the extent provided by agency rules, any other electronic means. However, electronic requests must be addressed to the agency's published facsimile number or e-mailed to the agency's e-mail inbox for RTKL purposes. All written requests must be addressed to the AORO.
- (3) **Contents of a written RTKL request.** A written RTKL request must include the name and the address to which the agency should address its response. The RTKL request must identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.
- (4) **Reason for a RTKL request.** A written request need not include any explanation of the requester's reason for making the request or the intended use of the records unless otherwise required by law. However, an agency may ask the requester to disclose that reason, in relation to the calculation of fees under Section 67.1307(b)(4)(ii), which contains fee provisions that relate to the intended use of the records; but the reason or the failure to provide a reason is not a basis for denial of an RTKL request.

- (5) Forms.** An agency must post the request form developed by the OOR on its website and must accept requests made on that form. An agency may also create or adopt its own forms for use by requesters in preparing written RTKL requests and such forms must be posted on its website.

b. Submittal of RTKL Requests.

- (1)** If an agency elects to have more than one RTKL office, the agency shall include in its written policies and public notices a statement and explanation of which types of RTKL requests are to be directed to which RTKL offices. If an agency establishes more than one RTKL office, the agency shall have the discretion to establish written policies to regulate the types of RTKL requests that may be submitted to them. Any request not specified in the agency's written policies may be submitted to any RTKL office.
- (2)** The five business day period does not begin to run until a RTKL request is received by the appropriate agency RTKL office designated to receive such request.
- (3)** Each agency shall advise its employees to promptly forward RTKL requests to the AORO.

c. Processing of RTKL Requests.

- (1)** Upon receiving a RTKL request on the Office of Open Records Form or on any other acceptable form at the appropriate RTKL office, the AORO at that office should ensure completion of the following:
 - (a)** Record receipt of an electronic request (e-mail or facsimile) or date-stamp non-electronic written requests.
 - (b)** Assign a tracking number to the RTKL request.
 - (c)** Record the RTKL request in the system used by the agency for tracking RTKL requests and their final disposition.
 - (d)** Compute the day on which the five business day period will expire and note the same on the written request.
 - (e)** Keep an electronic or paper copy of the written RTKL request, including all documents submitted with it and the envelope (if any) in which it came.
 - (f)** Create a file for the retention of the original RTKL request, a copy of the response provided, a record of verbal or written communications with the requester and a copy of other communications.

- (2)** Calculating the five business day period:
- (a)** Each agency shall, in its written policies, specify the regular business hours of its RTKL office(s). Any RTKL request received by a RTKL office after the close of those regular business hours shall be deemed to have been received by that office on the following business day.
 - (b)** For purposes of determining the end of the five business day period, the day that a RTKL request is received (or deemed to be received) is not counted. The first day of the five business day period is the agency's next business day.
- (3)** Because of the strict limits on the period of time in which an agency may timely respond to a RTKL request, an AORO should promptly process each request and complete intake procedures.

d. Initial Review by the AORO.

- (1)** Upon receiving a RTKL request, the AORO should promptly review it and consult with the Records Legal Liaison, if appropriate. The purpose of this review is to make a good faith effort to determine if the record requested is a public record; if the agency has possession, custody or control of the requested record; and if the agency will require more than five business days to respond. The initial review by the AORO should determine the following:
- (a)** Whether the RTKL request must be granted, in whole or in part, without further consideration. For example, if the initial review determines that the requested records are public records and are in the possession and control of the agency, no further analysis is necessary.
 - (b)** Whether a basis exists for rejecting the RTKL request, in whole or in part, without further consideration. Such bases include the following:
 - 1** The records sought by the requester are not identified with sufficient specificity.
 - 2** The requester is not a legal U.S. resident.
 - 3** The requested record does not exist.
 - 4** While the agency possesses the requested document, it is not a "record" pursuant to the RTKL. The requested information must have a clear nexus to the agency's activities or transactions to be a "record." If the requested information does not document a transaction or activity of an agency or it was not created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency, it is not a record.

- 5** The agency does not possess the document and does not have an affirmative obligation to obtain the document from a third party.
- 6** The AORO has been advised by agency counsel that the requested record is not a public record under the RTKL.
- (c)** Whether the record requested is maintained by another agency. In that case, the request should be directed to the AORO of that agency. (See Enclosure 2 - Sample Referral to Another Agency).
- (2)** In conducting this initial review, the AORO may contact the requester in order to obtain clarification or additional information. However, such contact or request for clarification, alone, does not alter the time limits for response under the RTKL. If, as a part of any such contact, the AORO concludes that the requester has changed or rescinded the RTKL request, the AORO should seek the requester's verbal or written confirmation and should record and retain in the file any confirmation that is given. A copy of any writing to or from the requester should become a part of the file. If contact is verbal (in person or by telephone) the AORO should immediately document the conversation and include that documentation as a part of the file. If the result of the communication with the requester is a more specific explanation of the original RTKL request or a reduction of that RTKL request, the modification should not be considered a new RTKL request. If, however, the communication with the requester results in a RTKL request for different or additional records, it should be treated as a new RTKL request as to those records.
- (3)** If, after the AORO completes this initial review, the RTKL request is not rejected in whole, the AORO should make appropriate inquiry of potential records custodians. Each potential records custodian contacted by the AORO should promptly review records under the custodian's control and advise the AORO as to any records that are responsive to the request that they may have and identify any other potential record custodians who may have such records. If a records custodian has a concern about whether the requester should receive access to or copies of a record, such records custodian should promptly notify the AORO. Upon receiving such notice, the AORO may take such steps as the AORO deems appropriate, including review by the Records Legal Liaison. The agency or the AORO may establish such procedures as are deemed desirable to effectively record actions taken, to apprise agency officials of RTKL requests and issues related thereto and to assure timely and accurate responses.

- (4) The AORO also shall review the request in order to determine whether the estimated fees, pursuant to *65 P.S. 67 § 1307*, as set forth in *Section 8(b)(6.7)* of this Management Directive, that are required to fulfill the RTKL request exceed \$100. If they do, the AORO may present the requester with a demand for prepayment. An agency may insist that such prepayment be made by certified check. In the alternative, the agency may insist that an ordinary check must first have cleared to be considered received by the agency. The demand for prepayment may specify a reasonable period of time in which the requester must make such prepayment. If the requester fails to make prepayment within the specified time, the agency is not required to produce the records requested.

e. Responses in General.

- (1) The AORO may respond by providing a requester with access to inspect a record electronically or as otherwise maintained by the agency, either: by providing access in the offices of the agency; by sending a copy to the requester; or by notifying the requester that the record is available through publicly accessible electronic means. (See Enclosure 3, Sample Granted Request). Each of these options is a "response" for purposes of the RTKL, as is an agency's written notice to the requester granting, denying or partially granting and partially denying access to a record. (See Enclosures 1 and 4, Sample Denied and Sample Granted in Part/Denied in Part).
- (2) If timely access is not provided in accordance with above paragraph, the agency must send a response to the requester in writing. The AORO has the duty to prepare and send written responses.
- (3) An agency may send written responses to requesters by United States mail, by hand (in person or by delivery service), by facsimile or, by e-mail.

f. Duplication of and Physical Access to Public Records.

- (1) Unless otherwise provided by law, the public records of an agency must be accessible for inspection by any requester during the regular business hours of the agency. In the case of a public record that is available only through electronic means, the agency must provide access to the public record at an office of the agency. This requirement may be satisfied by providing access (under supervision, as deemed appropriate, to prevent access to information that is not a public record of the agency) at a computer or computer terminal located in a public records access room. In making records electronically available, agencies should exercise care not to disclose information protected by the RTKL.

- (2)** Public Records Access Room. An agency may, in its discretion, establish one or more public records access rooms as it deems appropriate. The function of a public records access room is to provide a specific, established site where the public can have physical access to some or all of an agency's public records. If an agency elects to have a public records access room, the agency may, in its discretion, store some or all of its public records in that room, and may place one or more computers or computer terminals in that room, in order to provide access to electronic records. An agency that establishes a public records access room has the discretion to establish policies governing the use of that room including, but not limited to, the hours of access, restrictions or prohibitions on the removal of records, the ability of a requester to bring his or her own duplication or other equipment into the room, and limitations on use of computers and computer terminals (including limiting to use under supervision to prevent access to information which is not a public record of the agency). If an agency has more than one public records access room, the agency may, in its discretion, establish differing policies for each such room. If an agency elects not to establish such a room, the agency's AORO shall determine on an ad hoc basis the building and room where records will be made available to a requester and the hours of availability.
- (3)** A public record must be accessible for duplication by a requester. Each agency shall have the discretion to establish its own policies regarding requests or attempts by requesters to bring duplication equipment, computers and other equipment into the agency's offices for the purposes of making copies of public records. If the agency does not make duplication equipment available to a requester or provide other means by which a requester can obtain copies, such as having agency staff make the copies or providing for the use of a duplicating service, it cannot bar the requester from the reasonable use of the requester's own equipment.
- (4)** Each agency has the discretion to establish its own policies regarding how records are duplicated. For instance, an agency may make its duplication equipment available to a requester but require that the requester operate the equipment; the agency may assign its own staff to make the duplications requested by the requester; or it may contract for duplication services and require that the requester pay the contractor for those services.
- (5)** A public record must be provided to a requester in the medium requested if the record exists in that medium. Otherwise, the public record must be provided in the medium in which it exists. If a public record only exists in one medium, the agency is not required to convert that public record to another medium, except that if the public record is only available in an electronic form, the agency must print it out on paper if the requester so requests.
- (6)** An agency is not required to create a public record that does not already exist, nor is an agency required to compile, maintain, format, or organize a public record in a manner in which the agency does not currently do so.

g. Interim Responses.

- (1)** An agency must provide a final response to a RTKL request within 5 business days unless one or more specific conditions are satisfied and the AORO gives the requester written notice that additional time will be required. The requester's written agreement is required if the extension will be over 30 days. (Refer to Enclosures 5 and 6, Sample Under 30 Days Extension and Sample Over 30 Days Extension). That notice is referred to as an "interim response."
- (2)** The AORO may send an interim response, if any, of the following apply:
 - (a)** The RTKL request requires redaction of a public record.
 - (b)** The RTKL request requires retrieval of a record stored at a remote location.
 - (c)** A response within the 5 business day period cannot be accomplished due to bona fide staffing limitations, which limitations must be specified in the interim response.
 - (d)** A legal review is necessary to determine whether the record requested is subject to access under the Act.
 - (e)** The requester has not complied with the agency's policies regarding access to public records.
 - (f)** The requester has not complied with a demand for prepayment of fees, which are required to fulfill the RTKL request and which are estimated to exceed \$100. If prepayment of fees is required by the agency, the time period for response shall be tolled from the time the demand for payment is made until such time as payment is actually received.
 - (g)** The extent or nature of the request precludes a response within the required time period.
- (3)** An interim response must meet the following criteria:
 - (a)** It must be sent to the requester on or before the last day of the 5 business day period.
 - (b)** It must include a statement notifying the requester that the request for access is being reviewed and the reason for the review.
 - (c)** It must state a reasonable date that a response is expected to be provided. This date must not be more than 30 calendar days from the end of the 5 business day period, unless the requester agrees in writing to a longer extension.

- (d) If the date of an expected response is in excess of 30 days following the five days allowed for in Section 901, the request will be deemed denied unless the requester has agreed in writing to the date specified in the notice.

h. Requests for certain records.

(1) Trade secrets or confidential proprietary information. Trade secrets and confidential proprietary information are covered by exemptions from production under the RTKL. In addition, special notification rules apply to information that included a written statement, when first provided to the Commonwealth, that the information was a trade secret or confidential proprietary information. When an AORO receives a request for such records, the following steps should be followed:

- (a) Before the last day of the 5 business day period, the AORO should:
 - 1** send an interim response to the requester stating that extra time will be required in order to conduct a legal review as to whether the requested records are protected from disclosure under the exemption for trade secrets and confidential proprietary information.
 - 2** the third party shall be notified that a request has been made, and that the third party has 5 business days to provide input to the agency.
- (b) After 10 business days have passed from the time notice was sent to the third party, the agency shall deny the request unless the third party has consented to the record being produced.

(2) Sensitive security information. When an AORO receives a request for a record that may contain sensitive security information, the following steps should be followed:

- (a) Before the last day of the 5 business day period, the AORO should send an interim response to the requester stating that extra time will be required in order to conduct a legal review as to whether the requested records are protected from disclosure under the applicable security exemption.
- (b) The AORO shall immediately forward the request to the Records Legal Liaison, who will alert the OGC designate for such requests.
- (c) The AORO shall collect all records responsive to the request and forward them to OGC for review prior to the final agency response.

(3) Requests for messages in electronic storage. Email, voicemail and text messages all involve recorded information in electronic storage. The AORO should follow the same steps to determine whether the requested messages are public records as with any other requested information.

- (a) If the content of the message is related to the business of the agency, the message is a record. If the requested information does not document a transaction or activity of an agency or it was not created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency, it is not a record. Under the Commonwealth's records management policy, a non-record is to be deleted or disposed of immediately and a transitory record is to be disposed of once its short-term administrative value is completed.
 - (b) If the record requested is in electronic form, the determination of whether it is a public record must be made on a case-by-case basis. The AORO should not assume that the fact that an email has a confidentiality or privilege disclaimer at the bottom means that it is exempt under the RTKL.
- (4) **Agency Discretion.** An agency may provide access to a record that is exempt from public disclosure if all of the following apply:
- (a) Disclosure is not prohibited by Federal or State law or regulation or court order.
 - (b) The record is not protected by privilege.
 - (c) The agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access. Note that this determination must be made by the agency head, and not the AORO. If the agency head determines that a non-public record should be provided in response to a RTKL request, the agency shall notify any third party that provided the information, the person that is the subject of the record and the requester.

i. Final Responses.

- (1) **Types of Final Response.** The Act provides for three types of written final response to a RTKL request:
- (a) The agency grants the entire RTKL request. (See Enclosure 3 - Sample Granted Request)
 - (b) The agency refuses the entire RTKL request. (See Enclosure 1 - Sample Denial)
 - (c) The agency grants part of the RTKL request and refuses or redacts the remainder. (See Enclosure 4 - Sample Granted in Part/Denied in Part)
- (2) **Deemed Denials.** The failure of an agency to make a timely written final response is a deemed denial under the Act.

(3) Final Responses Denying Requests, Either in Whole or in Part. If a written RTKL request is denied in whole or in part, a final written response must be issued, which must include the following (See Enclosures 1, 2 and 4):

- (a)** A description of the record requested.
- (b)** The specific reasons for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is not a public record, the specific reasons for the agency's determination that the record is not a public record shall be included.
- (c)** The typed or printed name, title, business address, business telephone number and signature of the AORO on whose authority the denial is issued.
- (d)** Date of response.
- (e)** The procedure to appeal the denial of access under the RTKL.

j. Redaction. If only portions of a record are public records, the agency shall not deny access to the record based upon the fact that portions are not public records. Rather, the agency shall redact the portions that are not a public record, produce the portions that are a public record and state the basis for redaction.

k. Appeal Process. Appeals of a Commonwealth agency denial for access to a document will go first to the Office of Open Records.

- (1)** When a request is denied or deemed denied, whether in whole or in part, the requester may file an appeal with the Appeals Officer.
- (2)** A requester must file an appeal with the Appeals Officer within 15 business days of a denial or deemed denial. The appeal must state the grounds upon which the requester asserts that the record is public, and should address any grounds stated by the agency for delaying or denying the request.
- (3)** A person other than the agency or the requester with a direct interest in the record subject to an appeal has 15 days following actual knowledge of the appeal, but no later than the date the Appeals Officer issues an order, to file a written request to provide information or to appear before the Appeals Officer in support of the requester's or the agency's position in the appeal. The Appeals Officer may, but needs not, grant the request.
- (4)** The Records Legal Liaison or designee shall represent the AORO on appeal.
 - (a)** The Records Legal Liaison is responsible for promptly compiling the record on appeal and transmitting the record to the Appeals Officer.

- (b) Under the RTKL, one of the duties of the Appeals Officer is to “consult with agency counsel as appropriate”. To avoid any due process issues, the Records Legal Liaison should not participate in any off-the-record or *ex parte* discussions with the Appeals Officer.
 - (c) The Records Legal Liaison shall make a determination, independent from the determination of the Appeals Officer, as to whether any person other than agency personnel should be advised of the appeal and offered the opportunity to provide information or to appear at a hearing on behalf of the agency, if one is conducted.
- (5) The Appeals Officer may, but is not required to, hold a hearing on the appeal.
- (a) If an appeal is resolved without a hearing, 1 Pa. 25 Code Pt. II (relating to general rules of administrative practice and procedure) does not apply except to the extent that the agency has adopted these chapters in its regulations or rules under RTKL Section 1102(b).
 - (b) If a hearing is held, 1 Pa. Code Pt II shall apply unless the agency has adopted regulations, policies or procedures to the contrary under RTKL Section 1102 (b).
- (6) The Appeals Officer shall make a final determination regarding the agency’s response within 30 calendar days of the receipt of the appeal. If a final determination is not made within 30 calendar days, the appeal is deemed denied.

I. Judicial Review

- (1) The requester or an agency may file a petition for review with Commonwealth Court within 30 days of the mailing date of the final determination of the Appeals Officer or within 30 days of the date the request for access was denied or deemed denied.
- (2) A petition for review filed with the Commonwealth Court will stay the release of the records until a decision is rendered.

The effective date of this directive is January 1, 2009, as of which date it shall replace, in its entirety, *Management Directive 205.36* dated November 27, 2002.

Enclosures Right-To-Know Response Forms

Enclosure 1 - Sample Denial

Enclosure 2 - Sample Referral to Another Agency

Enclosure 3 - Sample Granted Request

Enclosure 4 - Sample Granted in Part/Denied in Part

Enclosure 5 - Sample Under 30 days extension

Enclosure 6 - Sample Over 30 days extension



COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Right-To-Know Response Form

Re: Sample Denial

Date _____

Citizen Name

Address

Telephone Number

Dear [**Citizen**],

Thank you for writing to [**Agency**] with your request for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL).

On [**Date received by agency**], you requested [**Describe information requested, or restate their request**].

The [**Agency**] has denied your request because [**describe specific type of information, such as medical records, academic transcripts or other exemption items**] is exempt from disclosure. [**Cite applicable section of the RTKL. If precluded from release by some other state or federal law, rule or regulation, cite that legal authority.**]

You have a right to appeal this denial of information in writing to Terry Mutchler, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

If you choose to file an appeal you must do so within 15 business days of the mailing date of this response, pursuant to Section 1101 of the RTKL. If you have further questions, please call [**AORO**]. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

AORO NAME [*information required to be typed*]

TITLE [*information required to be typed*]

BUSINESS ADDRESS [*information required to be typed*]

BUSINESS TELEPHONE [*information required to be typed*]

SIGNATURE



COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Right-To-Know Response Form

Re: Sample Referral to Another Agency

Date _____

Citizen Name

Address

Telephone Number

Dear [**Citizen**],

Thank you for writing to [**Agency**] with your request for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL).

On [**Date received by agency**], you requested [**Describe information requested, or restate their request**]. The requested records are not in the possession of this agency. Pursuant to section 67.502(b)(1) of the RTKL, I am forwarding your request to the Agency Open Records Officer for [**name of other agency**]. That agency may have documents responsive to your request. However, in order to avail yourself of the relief and remedies provided in the RTKL with respect to a response to your request by [**other agency**], you should personally direct a Right-to-Know Law request to [**other agency**], as follows:

**[AORO Name
Agency Business Address
Agency E-mail inbox Address]**

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

AORO NAME [*information required to be typed*]

TITLE [*information required to be typed*]

BUSINESS ADDRESS [*information required to be typed*]

BUSINESS TELEPHONE [*information required to be typed*]

SIGNATURE



COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Right-To-Know Response Form

Re: Sample Granted Request

Date _____

Citizen Name
Address
Telephone Number

Dear [Citizen],

Thank you for writing to [**Agency**] with your request for information pursuant to the *Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq.*

On [**Insert date received by agency**], you requested documents that [**insert description of information requested, or restate their request**]. Your request is granted and the records responsive to your request are enclosed.

Respectfully,

AORO NAME [*information required to be typed*]
TITLE [*information required to be typed*]
BUSINESS ADDRESS [*information required to be typed*]
BUSINESS TELEPHONE [*information required to be typed*]

SIGNATURE



COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Right-To-Know Response Form
Re: Sample Granted in Part/Denied in Part

Date _____

Citizen Name

Address

Dear [**Citizen**],

Thank you for writing to [**Agency**] with your request for information pursuant to the *Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq.* (RTKL).

On [**date received by agency**], you requested [**description of information requested, or restate their request**]. Your request is granted in part and denied in part as follows. Your documents are enclosed.

However, the [**Agency**] has withheld information that is exempt from disclosure by law, as follows:

- o We redacted [**Describe redacted information: Examples....social security number, academic transcripts, medical information, or other exemptions**]. This information is exempt from disclosure under [**Cite applicable section of the law. If precluded from release by other state or federal law, rule or regulation, cite to that legal authority.**]
- o We did not provide [**Describe withheld information**]. This information is exempt from disclosure under [**Cite applicable section of the law. If precluded from release by other state or federal law, rule or regulation, you must cite to that legal authority.**]

You have a right to appeal this denial of information in writing to Terry Mutchler, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

If you choose to file an appeal you must do so within 15 business days of the mailing date of this response, as outlined in Section 1101 of the RTKL. If you have further questions, please call [**AORO**]. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

AORO NAME [*information required to be typed*]

TITLE [*information required to be typed*]

BUSINESS ADDRESS [*information required to be typed*]

BUSINESS TELEPHONE [*information required to be typed*]

SIGNATURE



**COMMONWEALTH OF PENNSYLVANIA
HARRISBURG**

Right-To-Know Response Form

Re: Sample for Up to 30 days extension

Date _____

Citizen Name

Address

Telephone Number

Dear [**Citizen**],

Thank you for writing to [**Agency**] with your request for information pursuant to the *Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101*, et seq. (RTKL).

On [**Date received by agency**], you requested [**Describe information requested, or restate their request**]. This letter acknowledges receipt by [**Agency**] of your written request for records under the RTKL. Therefore, under the RTKL, a written response to your request is due on or before [**Date response due**].

Under the provisions of 65 P.S. §902(b)(2), you are hereby notified that your request is being reviewed the reason(s) for the review are checked below, this agency will require up to an additional 30 days, i.e., until [**Date response due**], in which to provide a final written response to your request and the estimated fees that will be owed when the record becomes available \$ _____.

- Compliance with your request requires the redaction of certain information that is not subject to access under RTKL.
- Your request requires retrieval of one or more records that are stored at a remote location.
- A response by the mailing date of this letter could not be accomplished due to bona fide staffing limitations. In particular, _____.
- Your request is under legal review which is necessary to determine whether a requested record is a "public record" for purposes of the RTKL.
- Your compliance with the following agency policies is required for access to the record(s): _____
- You must pay the applicable fees authorized by the RTKL.

- The extent or nature of the request precludes a response within the required times period.

Should you have any questions regarding this letter, please contact the undersigned.

Respectfully,

AORO NAME *[information required to be typed]*

TITLE *[information required to be typed]*

BUSINESS ADDRESS *[information required to be typed]*

BUSINESS TELEPHONE *[information required to be typed]*

SIGNATURE



COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Right-To-Know Response Form

Re: Sample Over 30 days extension

Date _____

Citizen Name

Address

Telephone Number

Dear [**Citizen**],

Thank you for writing to [**Agency**] with your request for information pursuant to the *Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101*, et seq. (RTKL).

On [**Date received by agency**], you requested [**Describe information requested, or restate their request**]. This letter acknowledges receipt by [**Agency**] of your written request for records under the RTKL. Therefore, under the RTKL, a written response to your request is due on or before [**Date response due**].

Under the provisions of 65 P.S. §902(b)(c), you are hereby notified that your request is being reviewed, the reason(s) for the review are checked below and the estimated fees that will be owed when the record becomes available are \$ _____.

You are further notified that [**Agency**] will require until_____, in which to provide a final response to your request. If you agree with an extension until this date, please sign a copy of this letter and return it to the agency at the address below, otherwise this request for shall be deemed denied.

AORO NAME [*information required to be typed*]
TITLE [*information required to be typed*]
BUSINESS ADDRESS [*information required to be typed*]
BUSINESS TELEPHONE [*information required to be typed*]

The reason for requiring additional time for a final response is checked below:

- Compliance with your request requires the redaction of certain information that is not subject to access under RTKL.
- Your request requires retrieval of one or more records that are stored at a remote location.
- A response by the mailing date of this letter could not be accomplished due to bona fide staffing limitations. In particular, _____.

- Your request is under legal review which is necessary to determine whether a requested record is a “public record” for purposes of the RTKL.
- Your compliance with the following agency policies is required for access to the record(s): _____
- You must pay the applicable fees authorized by the RTKL.
- The extent or nature of the request precludes a response within the required times period.

Should you have any questions regarding this letter, please contact the undersigned.

Respectfully,

AORO NAME *[information required to be typed]*

TITLE *[information required to be typed]*

BUSINESS ADDRESS *[information required to be typed]*

BUSINESS TELEPHONE *[information required to be typed]*

SIGNATURE