

RIGHT-TO-KNOW LAW

1.01 PURPOSE

The purpose of this regulation is to establish Department policy and procedures for receiving, processing, tracking, and responding to written requests for public access to Pennsylvania State Police (PSP) records, pursuant to the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. §§ 67.101-67.3104 and Management Directive 205.36, Amended.

1.02 POLICY

It is the Department's policy to comply in good faith with Pennsylvania law, which affords all legal residents of the United States of America the right of access to public records maintained within this Commonwealth. Therefore, it is the Department's policy to accept, process, track, and respond to all written, legally-sufficient RTKL requests in a timely, efficient, and legally appropriate manner. All Department personnel shall familiarize themselves with this regulation and strictly adhere to its provisions, as well as to all requirements of RTKL and associated management directives of the Governor's Office.

1.03 DEFINITIONS

For purposes of this regulation, the listed terms shall have the following meanings:

- A. Agency Open Records Officer (AORO): Department **personnel** and Deputy AORO(s), Bureau of Records and Identification, designated by the Deputy Commissioner of Staff to act on the Department's behalf by receiving, processing, tracking, evaluating, responding to, and maintaining all written, RTKL-compliant requests for PSP records.
- B. Appeals Officer: An attorney from the Office of Open Records who reviews an appeal from an agency's denial of a written request for access.
- C. Confidential Proprietary Information: Commercial or financial information provided to the Department that is:

1. Privileged or confidential.
 2. The disclosure of which would cause substantial harm to the information provider's competitive position.
- D. Exception: An exception specified in RTKL § 67.708(b), which exempts a PSP record from public disclosure.
- E. Financial Record (PSP): Any of the following:
1. Any account, voucher, or contract dealing with:
 - a. The Department's receipt or disbursement of funds.
 - b. The Department's acquisition, use, or disposal of services, supplies, materials, equipment, or property.
 2. The name, rank/title, salary, or other payments made to a member or employee of the Department.
 3. A Department Financial Audit Report, but not the underlying audit work papers.
- F. Interim Response: Any written response issued by the AORO to a requester less than five business days after receipt of the RTKL request.
- G. Mailing Date: Any of the following, as indicated:
1. For the Department, the date affixed to the Department's response to a RTKL request, which is the date the response is deposited with the United States Postal Service.
 2. For a RTKL Requester:
 - a. The date of the postmark on the envelope transmitting the RTKL request. If the postmark is illegible, then the mailing date is deemed to be the first calendar day that immediately precedes the date on which the request is received (which is not a Saturday or Sunday or a Federal holiday).

- b. The transmission date affixed to a facsimile or email.
 - c. The date stamp affixed by the Department AORO to a RTKL request delivered by hand.
- H. Office of Open Records (OOR): A RTKL-established office in the Commonwealth's Department of Community and Economic Development which is charged with providing information, training, and advisory opinions regarding the implementation and enforcement of RTKL throughout Pennsylvania. OOR is also charged with appointing and training appeals officers to issue final determinations in all appeals taken from Commonwealth agency decisions involving RTKL requests.
- I. Public Record (PSP): **Information including a financial record** of the Department that is:
 - 1. Not exempt under RTKL 67.708(b).
 - 2. Not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree.
 - 3. Not protected by a privilege.
- J. Record (PSP): Information, regardless of physical form or characteristic, documenting an action or decision of the Department, which is created, received, or retained pursuant to law or in connection with an activity or transaction of the Department, including a financial record. The term "record" includes without limitation written, printed, photocopied and electronically-generated documents, memoranda, reports, emails, correspondence, voice and text messages, audio and video recordings, photographs, images, diagrams, books, manuals, regulations, training materials, and other publications. If a print, photocopy, or electronic-image of a record is itself "retained pursuant to law or in connection with an activity or transaction" of the Department, then the copy is itself a PSP record.
- K. Records Custodian: Any Department **personnel** who has possession, control, or custody of a RTKL-requested PSP record sought by the AORO and/or RTKL Liaisons.

- L. Records Coordinator: **Department personnel** responsible for duties associated with the Department's record management.
- M. Redaction: The process of obliterating privileged or exempted information, either manually or electronically, from a requested record, thereby enabling the Department to disclose the remaining, nonredacted information as a public record.
- N. RTKL: The Right-To-Know Law, 65 P.S. §§ 67.101-67.3104.
- O. RTKL-Compliant: Satisfying all pertinent RTKL requirements, as specified in applicable RTKL provisions.
- P. RTKL Liaisons: Department **personnel** designated by each Troop Commander and Bureau/Office Director to assist the AORO in processing, tracking, and responding to RTKL requests for PSP records. RTKL Liaisons are responsible for procuring, reviewing, and, if necessary, redacting requested PSP records created, received, or maintained by their respective Troop, Bureau, or Office before delivering those records to the AORO.
- Q. RTKL Legal Liaison: Department attorney(s) designated by the **Office of** Chief Counsel to provide the AORO and Department Records Coordinator with legal advice regarding RTKL-compliance, and to represent the Department in RTKL legal/administrative proceedings.
- R. RTKL Request: A written request made pursuant to RTKL for access to a PSP record, which is addressed to the AORO and which is otherwise legally sufficient.
- S. RTKL Requester: A legal resident (person or entity) of the United States of America requesting access to a PSP record.
- T. RTKL Response: The AORO's written reply, on the Department's behalf, to a RTKL-compliant request, which notifies the requester of the Department's determination to grant, deny, or partially grant and partially deny public access to a requested PSP record. The AORO's failure to reply to a RTKL request, though deemed a denial under RTKL, does not constitute a RTKL response.

- U. Sensitive Information: Information that, if released, might reasonably impair the security of Department personnel, their property, or reputations, if such information were to come into the possession of persons engaged in the commission of criminal acts, terroristic acts, acts of war, or persons engaged in planning such acts. Examples of "sensitive information" include, but are not limited to: blueprints and plans for Department facilities; plans for emergency response and evacuation, including counterterrorism protocols and other documents involving public health and safety; names, addresses, and other information that disclose the identity of Department personnel and their families; and information that would disclose the whereabouts of abused spouses or children.

- V. Total Projected RTKL Processing Fee (TPRPF): The sum of all anticipated fees associated with the processing of a RTKL request for PSP public records that must be paid, entirely, by the requester before the Department processes RTKL request (when the TPRPF exceeds \$100) or before the Department releases the requested PSP public records to the requester (when the TPRPF is \$100 or less).

- W. Trade Secret: Information including a formula, drawing, pattern, compilation, customer list, program, device, method, technique, or process that:
 - 1. Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.
 - 2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term includes data processing software obtained by the Department under a licensing agreement prohibiting disclosure.

1.04 DUTIES AND RESPONSIBILITIES

A. Members and Employees:

1. When presented with a written RTKL request for PSP records addressed to the AORO, including either the PSP RTKL Request, SP Form 3-226 (Appendage B), or the OOR Standard RTKL Request Form (Appendage C), accept and promptly forward the written RTKL request directly to the AORO.
2. Refer unwritten requests for PSP records and RTKL-related inquiries to the PSP RTKL web page at www.psp.pa.gov. Alternatively, a combination PSP RTKL Information Brochure (Appendage A) and a PSP RTKL Request may be provided to interested parties. If additional information is necessary, the requester shall be referred to the AORO.
3. Promptly deliver to the RTKL Liaison all records in their possession, custody, or control that have been requested by the AORO.
4. Perform all duties specified in this regulation.

B. Troop Commanders and Bureau/Office Directors:

1. Ensure all **personnel** under their command familiarize themselves with this regulation and understand the specific duties imposed upon them by the regulation.
2. Designate an adequate number of RTKL Liaisons under their command to ensure full and prompt responses by their command to all AORO requests for records.
3. Ensure complete familiarity of their RTKL Liaisons with all records created, received, or maintained by their command.
4. Ensure personnel are available to perform the RTKL duties and responsibilities in the absence of the assigned RTKL Liaison.

C. RTKL Liaisons:

1. Fully and timely respond to AORO requests for records of their respective Troop/Bureau/Office by comprehensively searching for and retrieving records that respond to the AORO request and reviewing the records for sensitive information, or other RTKL-exempt information, before delivering them to the AORO.
2. Provide all other needed services or assistance required by the AORO to **affect** RTKL-compliant responses to RTKL requests.
3. Once a RTKL Liaison has provided the AORO with a true and correct copy of the requested PSP record, the RTKL Liaison is under no obligation to preserve the record for purposes of RTKL and, therefore, shall continue to maintain and dispose of the record according to Department records retention schedules.

D. Agency Open Records Officer, Bureau of Records and Identification:

1. Acquire and maintain a complete understanding of all RTKL provisions, all Management Directive 205.36 provisions, all requirements of this regulation, and all OOR guidelines.
2. Act on the Department's behalf by receiving, processing, tracking, evaluating, responding to, and maintaining all written RTKL-compliant requests.
3. Refer all misdirected RTKL requests to designated AOROs of the appropriate government agencies.
4. Upon receipt of a request, make a good faith, expeditious effort to establish the Department's possession, custody, or control of a requested record and to determine whether it is a public record before issuing an appropriate response.
5. In coordination with the Department's webmaster, maintain a RTKL-compliant web page on the PSP website at www.psp.pa.gov.

6. Promote mechanisms and procedures to facilitate access to PSP public records.
 - a. The AORO shall ensure that PSP public records are accessible for a requester's inspection during the RTKL Office's normal hours of operation.
 - b. In coordination with the Department's webmaster, establish/maintain a current library of commonly requested PSP public records on the PSP website at www.psp.pa.gov.
 7. Confer with the RTKL Legal Liaison before denying any RTKL request for access to PSP records. As needed, seek legal advice or representation from the RTKL Legal Liaison in all other matters of RTKL compliance.
 8. Assess and collect applicable RTKL fees pursuant to this regulation.
- E. Director, Operational Records Division, Bureau of Records and Identification:
1. Ensure the Department's operational compliance with all requirements of RTKL and Management Directive 205.36, Amended.
 2. Oversee staffing, equipping, operation, and technical support of the AORO function.
 3. Promulgate policies/procedures governing access to PSP public records.
- F. **Records Coordinator, Forms, Records, and eLibrary Unit,**
Bureau of Research and Development:
1. Facilitate the Department's compliance with RTKL requirements, including its expeditious response to RTKL requests.
 2. Create and maintain a list identifying all reports and records held by each organizational segment of the Department.

3. Assist the AORO to protect from public disclosure all PSP records, except those which are, by definition, public records under RTKL.

G. Director, Bureau of Staff Services:

1. Comply with all current Pennsylvania Treasury Department protocols regulating agency compliance with RTKL government contract accessibility provisions (RTKL §§67.1701-1702).
 - a. Ensure the redaction of all non-public information from Department contract records before such records are uploaded onto the Treasury Department's contract public-access website.
 - b. If any Department contract record contains, or is believed to contain, sensitive information or other RTKL-exempted information, then promptly submit the record to the **Office of Chief Counsel** for the evaluation and redaction of the contract record by a RTKL Legal Liaison.
2. Ensure all Department requests for proposal, as well as all other types of solicitations and awarded purchase documents to be issued by the Department of General Services (DGS), Bureau of Procurement, contain the requisite DGS language warning vendors that their confidential proprietary information or trade secrets may become publicly accessible under RTKL, by virtue of the vendor's contractual relationship with the PSP.
3. Ensure all Department requests for proposal, as well as all other types of solicitations and awarded purchase documents issued by the Procurement and Supply/Facility Management Division(s) contain the requisite DGS language warning vendors that their confidential proprietary information or trade secrets may become publicly accessible under RTKL, by virtue of the vendor's contractual relationship with the PSP.

H. **Office of Chief Counsel:**

1. Chief Counsel:
 - a. Designate the Department's RTKL Legal Liaison.

- b. Oversee RTKL-related legal advice, opinions, and recommendations provided by the RTKL Legal Liaison to the AORO and Department personnel.
 - c. Oversee the RTKL Legal Liaison's representation of the Department in RTKL legal/administrative proceedings.
2. RTKL Legal Liaison, **Office of Chief Counsel**:
- a. Acquire and maintain a complete understanding of all legal requirements imposed on the Department by RTKL and all RTKL-related court decisions, as well as by the legal implications of all OOR advisory opinions.
 - b. Apprise the AORO of all court decisions and other legal developments bearing on RTKL compliance.
 - c. Review every proposed response involving the complete or partial denial of a RTKL request to verify its legal sufficiency and defensibility before the response is issued by the AORO.
 - d. Upon request, provide the AORO and other Department personnel with RTKL-related legal advice, opinions, and recommendations.
 - e. Represent the Department's legal interests in all RTKL-related legal/administrative proceedings.
 - (1) Upon notification of a requester's appeal of a Department denial, the RTKL Legal Liaison shall promptly compile and transmit the record on appeal to the Appeals Officer.
 - (2) Upon notification of a requester's appeal of a Department denial, the RTKL Legal Liaison shall independently determine whether a third party should be advised of the appeal and offered an opportunity to act on the Department's behalf by providing relevant information to the Appeals Officer

or by testifying at a hearing, should one be convened by the Appeals Officer.

- f. Conduct regular training presentations on RTKL-compliance issues **with** Department personnel.
- I. Deputy Commissioner of Staff:
 1. Ensure that a Department RTKL policy is adopted consistent with Management Directive 205.36 and that other Department policies are consistent with and support this regulation.
 2. Designate the Department's AORO.
 3. Provide required expertise to assist and support the AORO's performance of duties specified under this regulation.

1.05 PROCEDURE FOR AORO RESPONSE TO RTKL REQUESTS

- A. AORO Receipt of RTKL-Compliant Requests:
 1. To be received by the AORO, requests for access to PSP records must be written and RTKL-compliant.
 - a. Written requests must be submitted **and** addressed to the AORO.
 - b. The request must identify or describe the PSP records sought with sufficient specificity to enable the AORO to ascertain which records are being **sought**.
 - c. The request must provide a name and address to which the AORO RTKL response may be directed.
 - d. RTKL-compliant requests may be delivered via hand, email, facsimile, commercial carrier, or the **United States Postal Service** to **personnel** at any Department **Troop**, Station, **Bureau/Office**, or other facility during normal hours of operation.

- e. A requester does not need to explain why a record has been requested, nor reveal the intended purpose for obtaining the record's disclosure. Accordingly, the request may not be denied on these bases.
2. For the purposes of calculating RTKL response deadlines, the Department's receipt of a request for public access to PSP records occurs only when the AORO receives a written, RTKL-compliant request.
- B. AORO Processing of RTKL Requests:
1. Upon receiving a written request, the AORO shall, at a minimum, promptly complete the following tasks:
 - a. Date stamp the request, or otherwise record the receipt on an electronically-transmitted (facsimile or email) request.
 - b. Assign and record a Department tracking number to the request.
 - c. Compute the day on which the five business day period will expire and make a notation of that date on the first page of the request.
 - d. Enter the request into the Department's RTKL tracking database.
 - e. Create an Official AORO RTKL Request File for the retention of the original RTKL request, together with all accompanying documents and correspondence. This shall include the envelope (if any) in which the request came, copies of interim and/or final responses, all communications with the requester, and all other records created, received, or maintained by the AORO regarding the request, responses, and any resulting appeal.

2. For purposes of determining the five business day period:
 - a. A business day shall be Monday through Friday, except those days when the Department RTKL Office is closed for all or part of the day due to a State holiday; pursuant to Management Directives 530.17, Partial and Full-Day Closings of State Offices, and 505.7, Personnel Rules, Section 8.7, due to severe weather (such as a blizzard or ice storm) or natural or other disaster.
 - b. The official business operation of the RTKL Office shall be Monday through Friday, **0815-1615 hours**, except as stated in paragraph 2a. Any RTKL request received by the RTKL Office after the close of regular business hours shall be deemed to have been received on the next business day. For example, a facsimile transmission received at 2200 hours on a Friday is deemed to be received on the following Monday (unless that Monday is a holiday **then**, receipt shall be deemed to be Tuesday).

C. Initial AORO Review of RTKL Requests:

Upon receiving a request, the AORO shall promptly review it to determine the following:

1. Whether the request must be granted, in whole or in part, without further consideration, because the request is clearly RTKL-compliant, and the PSP records sought are recognized to be PSP public records.
2. Whether basis exist for rejecting the request, in whole or in part, without further consideration. Reasons for rejection include:
 - a. The requester is not a legal resident of the United States of America.
 - b. The requested record has not been identified with sufficient specificity.
 - c. The requested record does not exist.

- d. The requested record is not in the Department's possession, custody, or control, and the Department does not have an affirmative duty to obtain the record from a third-party.
 - e. The RTKL Legal Liaison has advised the AORO that the request seeks a PSP record that is not a PSP public record.
3. Whether the requested record is maintained by another government agency.

D. AORO Informal Contacts with the Requester:

- 1. If, during an initial review, the AORO requires additional information or clarification in order to properly evaluate the request, the AORO shall first attempt to obtain the necessary information or clarification by informally contacting the requester before denying the request as non-specific.
- 2. If during an initial review the AORO believes the request will involve an unnecessarily costly or time-consuming response, the AORO should attempt to informally contact the requester, in order to:
 - a. Suggest how the request might be reduced in scope or otherwise limited to reduce costs or expedite the response.
 - b. Provide the requester with a projection of total processing fees the requester will be required to pay before the requested PSP records are produced.
- 3. Should the requester take any of the following actions during the informal contact, the AORO shall issue a RTKL Request Change/Withdrawal Letter (Appendage D) to the requester confirming the action taken.
 - a. The requester changes the request by providing additional information or clarification that effectively reduces the scope of the request.

- b. The requester seeks access to additional or different records.
 - c. The requester withdraws the request.
 - 4. Changes that reduce the scope of a request will not affect the original response deadlines.
 - 5. Changes that seek different or additional records shall be processed as new RTKL requests, involving new response deadlines.
 - 6. The AORO shall keep a record of all actual/attempted informal contacts with the requester which shall reflect the date, time, reason, and/or substance of the contact. This record of informal contact shall be comprised of contemporaneously prepared memoranda of all verbal communications and prints of all written communications.
- E. Interim AORO Response to RTKL Requests:
 - 1. When a request is received, the AORO shall determine whether any of the following circumstances exist, thus extending the five-business-day response period by an additional 30 calendar days.
 - a. The requested record requires redaction.
 - b. The requested record must be retrieved from a remotely located record repository.
 - c. A timely response cannot be issued, due to legitimate, specified staffing limitations.
 - d. The RTKL Legal Liaison must review a requested record to determine whether it is a public record.
 - e. The requester has not complied with the Department's RTKL request policies.
 - f. A timely response is precluded by the nature or extent of the request.

- F. General AORO Response Procedures Following Initial Review:
1. If the requested record is maintained by another agency:
 - a. The AORO shall redirect the request to the appropriate agency AORO within five business days of receiving the request and notify the requester accordingly.
 - b. A single Agency RTKL Referral Letter (Appendage G) shall serve to notify the requester of the referral and to transmit the request to the agency.
 2. If the AORO determines from the initial review that the request should be denied **in whole** for any reason:
 - a. Then the AORO shall review the request with a RTKL Legal Liaison to verify the basis for denial.
 - b. If the RTKL Legal Liaison agrees **that** the request must be denied, the AORO shall immediately prepare a RTKL Request Denial Letter (Appendage H), which shall be sent to the address appearing on the request form. The letter shall list each and every reason for denial of the RTKL request, together with a citation to **the** applicable RTKL provision or other supporting legal authority.
 3. If the AORO determines from the initial review that the request must be granted, in whole or in part:
 - a. The AORO shall expeditiously disseminate a RTKL Record Transmittal Memorandum (Appendage I) to every appropriate RTKL Liaison.
 - b. The RTKL Record Transmittal Memorandum to the RTKL Liaisons shall specify the records and assistance required by the AORO, plus any necessary handling instructions or cautionary notices. The memorandum shall clearly indicate a RTKL Liaison status report due date and a RTKL Liaison final delivery due date.

- (1) The status report due date should be set to precede the five-business-day RTKL response deadline.
 - (2) A final delivery due date should be set to precede the 30 calendar-day extended RTKL response deadline.
- c. The AORO shall keep a record of all RTKL Liaisons to whom RTKL Record Transmittal Memorandums were disseminated and record all RTKL Liaison responses to status report due dates and final delivery due dates or extended delivery due dates. Should a RTKL Liaison fail to respond by a specified deadline, the AORO shall immediately contact the Liaison to determine and resolve the problem.
- d. If not already **completed**, the AORO shall perform all duties specified under this regulation regarding estimated RTKL response fee determination and notice to requester.
- e. When granting a RTKL request for PSP records, in whole or in part, the AORO shall generally produce PSP public records in printed format only, with each page bearing a production date and a sequential production number. The PSP records shall be enclosed with appropriate correspondence: a RTKL Request Grant Letter (Appendage J) or a RTKL Request Partial Grant/Denial Letter (Appendage K).
- (1) The production date shall appear in the lower left corner of each page of the PSP record in Arial (12 **point**) font, in the following format: yyyy-mm-dd.
 - (2) The production number shall appear in the lower right corner of each page of the PSP record in Arial (12 **point**) font, in the following format: PSP/RTKL.000001.

- (3) Photographic prints, compact discs, and out-sized records will be identified with labels bearing production dates and numbers, which shall be affixed to each print or item so as to avoid obscuring any depicted image or information (e.g., affixed to the reverse side of **photographic** prints).
 - f. Should a requester submit a written request for the certification of a PSP record for the purpose of legally verifying the public record, the AORO shall accommodate the request as follows:
 - (1) The AORO shall certify a PSP record in accordance with Pa. R.E. 902(4) or F.R.E. 902(4) by executing a RTKL Certification of Public Record (Appendage L) in the presence of a notary public.
 - (2) The AORO shall not certify records in bulk, but shall execute individual certifications for specific records only.
 - (3) A certification fee shall be charged for each PSP Public Record Certification Letter executed by the AORO on the requester's behalf.
 4. The AORO may transmit written responses to RTKL requests via hand, email, facsimile, commercial carrier, **United States Postal Service**, or as the AORO deems appropriate.
- G. Handling Requests for Certain Types of PSP Records:
 1. Records Possessed by Department Contractors:
 - a. A record not in the Department's possession, but in the possession of a party with whom the Department has contracted to perform a governmental function on the Department's behalf, which directly relates to the Department's governmental function, and which is not RTKL-exempt, shall be considered a PSP public record.

- b. Upon the AORO's determination that a record in the possession of a Department contractor is a PSP public record, the AORO shall direct the contractor to deliver a true-and-correct copy of the record to the AORO within **ten** calendar days for the AORO's review and eventual production.
 - c. The AORO shall send an interim response, no later than five business days following the date of receipt of the request, to the requester stating that extra time will be required to process the request.
 - d. The AORO shall **inform** the requester **of** the OOR-established duplication fee or the fee charged by the contractor, whichever is greater. Upon collection of the fee, the AORO shall remit the fee to the contractor.
2. Trade secrets or confidential proprietary information:
- a. Third-party trade secrets and confidential proprietary information maintained by the Department may be exempted from public disclosure under RTKL. To qualify for exemption, a written statement must have been delivered to the Department along with the third-party records declaring the records to be a trade secret or confidential proprietary information.
 - b. When the AORO receives a request for such records, the AORO shall take the following steps within five business days after receipt of the request:
 - (1) Send an interim response to the requester stating that extra time will be required to determine whether the requested records are protected from disclosure under the RTKL exemption for trade secrets and confidential proprietary information.
 - (2) Immediately forward the request to the RTKL Legal Liaison for review.

- (3) Notify the third party, in writing, that a RTKL request has been made for records containing their trade secret or confidential proprietary information and that the third party has five business days to provide the Department with input regarding public disclosure of this information.
 - c. Ten business days after written notice was sent to the third party, the Department shall deny the request, unless the third party has consented to the record being produced.
3. Sensitive security information:
 - a. When the AORO receives a request for such records, the AORO shall take the following steps within five business days after receipt of the request:
 - (1) Send an interim response to the requester stating that extra time will be required to determine whether the requested records are protected from disclosure under the applicable RTKL security exemption.
 - (2) Immediately forward the request to the RTKL Legal Liaison, who will alert the Office of General Counsel designee for such requests.
 - b. The AORO shall collect all records responsive to the request and forward them to the RTKL Legal Liaison, who will review the Department's intended denial of access to the sensitive security information with the Office of General Counsel before the AORO issues a final response.
 - c. The AORO shall send a denial letter to the requester.

4. Requests for Electronically-Stored Messages:
 - a. Electronically-stored messages include email, voicemail, and text messages. As with any other PSP record, the AORO shall determine whether requested, electronically-stored messages are PSP public records. If a message was created, received, or retained pursuant to law or in connection with an activity or transaction of the Department, and the content of the message documents an action or decision of the Department, then the message is a record.
 - b. The appearance of a privilege or confidentiality disclaimer on an email does not necessarily exempt the record from disclosure under RTKL.

1.06 DUTIES OF RTKL LIAISONS AND RECORDS CUSTODIANS

- A. Duties of RTKL Liaisons in Response to Receipt of AORO RTKL Transmittal Memorandums:
 1. Upon receipt of a RTKL Record Transmittal Memorandum, the RTKL Liaison shall:
 - a. Immediately take note of the RTKL Liaison status report due date and a **the** final delivery due date indicated on the memorandum, as well as any handling instructions and cautionary notices issued by the AORO.
 - b. Promptly review records of the Troop/Bureau/Office to determine whether the records specified in the memorandum exist and are readily accessible.
 2. Following this review, but before the status report due date, the RTKL Liaison shall either:
 - a. Endorse and return the RTKL Record Transmittal Memorandum to the AORO, along with the requested records; **or**

- b. Endorse and return the RTKL Record Transmittal Memorandum to the AORO, advising the AORO that the requested records do not exist; **or**
 - c. Contact the AORO to:
 - (1) Confirm delivery of the requested records to the AORO on/before the final delivery due date; **or**
 - (2) Report complicating factors affecting the retrieval/review or delivery of the requested records and provide the AORO with a projected extended delivery due date.
3. RTKL Liaisons shall fully and timely respond to AORO requests, for records of their respective Troop/Bureau/Office, by comprehensively searching for and retrieving records that **correspond** to the AORO request. RTKL Liaisons shall also review the records for sensitive information, or other RTKL-exempt information, before delivering them to the AORO.
- a. RTKL Liaisons shall provide an unaltered copy of the record to the AORO.
 - b. If the RTKL Liaison believes the record contains sensitive information or other RTKL-exempted information, the RTKL Liaison shall mark this information for RTKL Legal Liaison review by fully encircling the information in question. In all such instances, the RTKL Liaison shall explain, in writing, why the encircled information should be redacted before the record is produced to the requester.
 - c. RTKL Liaisons shall facsimile, scan, or overnight deliver **records** to the AORO, both the complete unaltered record and those portions of the record which the RTKL Liaison has fully encircled and identified as sensitive or other RTKL-exempted information.

4. If the RTKL Liaison believes sensitive or other RTKL-exempted information is or may be contained in a requested record, the Liaison shall notify the AORO immediately and ask for a legal evaluation of the record by a RTKL Legal Liaison.
 5. When the RTKL Liaison has performed all required tasks prompted by receipt of a RTKL Record Transmittal Memorandum, the Liaison shall enter all required information on the memorandum, which must be verified pursuant to 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities) and return the verified memorandum to the AORO, along with the requested records, if any.
 6. If the RTKL Liaison projected an extended delivery due date and the requester **accepts the** extended RTKL response date proposed by the AORO, then on/before the extended delivery due date, the RTKL Liaison shall endorse and return the RTKL Record Transmittal Memorandum to the AORO, along with the requested records.
- B. Duties of Records Custodians in Response to AORO and/or RTKL Liaison Requests for Assistance:
1. Any Department **personnel** who has possession, custody, or control of a PSP record is a "custodian" of that record. Custodians are subject to RTKL requirements whenever the Department receives RTKL requests for records in their possession, custody, or control. Accordingly, Department personnel who are custodians of requested PSP records shall at all times cooperate fully with the AORO and RTKL Liaisons to ensure complete and timely responses to RTKL requests for PSP records.
 - a. When contacted by the AORO or a RTKL Liaison, Department personnel shall conduct prompt, good faith investigations to determine whether they are custodians of any records identified in the request.

- b. If Department personnel determine that a record in their possession, custody, or control **corresponds** or may **correspond** to the RTKL request, then they shall immediately transmit a true and correct copy of the record to the AORO and/or RTKL Liaison via facsimile, email, or hand delivery. If Department personnel have any doubt as to whether a PSP record in their custody pertains to a request, they shall forward the record to the AORO and/or RTKL Liaisons for such determination.
 - c. If Department personnel determine from the search of PSP records in their possession, custody, or control that none of the records pertain to the request, then they shall immediately notify the AORO and/or RTKL Liaisons accordingly, in writing, via facsimile, email, or hand delivery.
 - d. If Department personnel know or believe that other Department personnel may be custodians of requested records, they shall promptly notify the AORO and/or RTKL Liaisons and the potential custodians accordingly, in writing, via facsimile, email, or hand delivery.
 2. If a custodian believes a responsive record contains sensitive information or other RTKL-exempted information, the custodian shall photocopy those portions of the record containing this information, fully encircle the information appearing on the photocopy, and immediately deliver the marked photocopy to the RTKL Liaison, along with the true-and-correct (unaltered) copy of the record, via facsimile, email, or hand delivery.
 3. Once a custodian of a requested PSP record has provided the AORO and/or RTKL Liaisons with a true-and-correct copy of the record, the custodian is under no obligation to preserve the record for purposes of RTKL and, therefore, shall continue to maintain and dispose of the record according to Department records retention schedules.

1.07 FINAL WRITTEN RESPONSES

The AORO shall provide a final written response within five business days after receiving a RTKL request, unless one or more of the conditions specified in this regulation exist, in which case the AORO shall send a 30-Day RTKL Response Extension Letter to the requester no later than five business days following the request's receipt.

A. Final responses granting requests:

1. A written request for a record will be granted if the requested record is within the statutory definition of a public record and does not involve one of the statutory exemptions.
2. The Department may, at its discretion, provide access to a PSP record that is otherwise exempt from public disclosure, but only if all of the following apply:
 - a. Disclosure of the PSP record is not prohibited under Federal or State law or regulation; or judicial order or decree.
 - b. The record is not protected by a privilege.
 - c. The Commissioner determines that the public interest favoring access to the PSP record outweighs any individual, Departmental, or public interest that may favor restriction of access.

B. Final responses denying requests, in whole or in part, shall include:

1. A description of the record requested.
2. Specific reason(s) for the denial, including citation of supporting RTKL provisions or other legal authority.
3. The typed or printed name, title, business address, business telephone number, and signature of the AORO **under** whose authority the denial is issued.
4. The words "Mailing Date:" followed by the actual mailing date of the response.

5. The RTKL appeal **procedures** from the Department's denial or partial denial of access to a PSP record.
- C. Grounds for a denial: A written request for access to, or a copy of, a record may be denied if any one of the following circumstances exists:
1. The requester is not a legal resident of the United States of America.
 2. The requester has not identified the requested record(s) with sufficient specificity.
 3. The record does not exist.
 4. The requester has not prepaid the costs of a TPRPF exceeding \$100.
 5. The record in question does not satisfy the statutory definition of a public record.
 6. The record in question falls within one or more of the statutory exceptions to the definition of a public record.
- D. Redaction:
1. If the AORO determines that a PSP record contains both publicly accessible and inaccessible information, the Department must disclose the publicly accessible information. This can be accomplished in one of two ways:
 - a. If non-accessible information comprises the entire content of discrete pages in the record, those entire pages shall be withheld when the publicly accessible portion of the PSP record is produced in response to the RTKL request.
 - b. If the inaccessible information cannot be separated from the record in this manner, the information must be redacted from the PSP record before the publicly accessible portion of the PSP record is produced in response to the RTKL request.

2. The AORO shall ensure that any information prohibited from public disclosure is redacted from every PSP public record. To be effective, redacted PSP records **shall** be printed, scanned, marked with appropriate production numbering, and reprinted **or use redaction software** before the records may be securely disclosed as PSP public records.
3. If the AORO redacts any information from a PSP record, such redaction is deemed a denial, from which the requester may appeal.

1.08 APPEAL PROCESS

- A. Appeals **for** Department denial of RTKL request for a PSP record must be filed by the requester with the OOR:
 1. When a request is denied or deemed denied, whether in whole or in part, the requester may file an appeal with an OOR 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 PSP record is public and should address any grounds asserted by the Department for delaying its response or denying the request.
 3. A third party having a direct interest in the public disclosure of the PSP record at issue has 15 days following actual knowledge of the requester's appeal, but no later than the date on which the Appeals Officer issues a final determination, 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 request may be granted or denied at the discretion of the Appeals Officer.
 4. The RTKL Legal Liaison, or designee, shall represent the Department and the AORO on appeal:
 - a. The RTKL Legal Liaison is responsible for promptly compiling and submitting the record on appeal to the Appeals Officer.

- b. To avoid any due process issues, the RTKL Legal Liaison shall not engage in *ex parte* discussions with the Appeals Officer.
 - c. The RTKL Legal Liaison shall determine whether any persons other than Department personnel should be advised of the appeal and offered the opportunity to provide information or to appear at the hearing on the Department's behalf.
- 5. The Appeals Officer may, but is not required to, hold an evidentiary hearing on the appeal.
 - 6. The Appeals Officer shall make a final determination regarding the Department's response to the RTKL request within 30 calendar days of the appeal's receipt. If a final determination is not made within 30 calendar days, then the appeal is deemed denied.
- B. Judicial Review:
- 1. The requester or the Department may file a petition for review of the final determination with the Commonwealth Court within 30 days of the mailing date of the Appeals Officer's final determination or within **the** 30 days of the date the appeal is deemed denied.
 - 2. A petition for review filed with the Commonwealth Court will stay the release of the PSP records at issue until the court renders a decision on the petition.

1.09 RETENTION OF RTKL FILES

An Official AORO RTKL Request File created and maintained pursuant to this regulation shall be retained by the Department for a period of **two** years from the date of final disposition of the RTKL request; i.e., the Department's final RTKL response, the OOR Appeal Officer's final determination, or the entry of a final judicial order, whichever is latest, at which time the Official AORO RTKL Request File shall be purged.

1.10 RTKL REQUEST FORMS

Combination PSP RTKL Information Brochure/PSP RTKL Request pamphlets shall be publicly displayed and distributed at every PSP installation. However, RTKL requesters must complete RTKL request forms.

1.11 OFFICIAL RTKL POSTING

The Department shall post the following information on the RTKL web page on the Department's website at www.psp.pa.gov:

- A. The name of the Department AORO.
- B. The Department address to which RTKL requests should be mailed or delivered.
- C. The Department RTKL facsimile number and email address for submission of RTKL requests.
- D. The PSP RTKL Request and the OOR Standard RTKL Request Form.
- E. The Department's policies and procedures regulating the submission of RTKL requests for access to PSP records.
- F. A schedule of OOR-established duplication fees and other applicable fees established by the Department as specified in this regulation.
- G. Contact information for the OOR, including the mailing address, email address, telephone number, and website:
www.openrecords.pa.gov.

1.12 ASSESSMENT AND COLLECTION OF TOTAL PROJECTED RTKL PROCESSING FEES

- A. Assessment of the TPRPF:
 - 1. When responding to a RTKL request, the AORO shall assess the TPRPF, based on the following fee schedule:
 - a. Photocopies (\$.25 per exposure/page).

- b. Certified copies (\$2.00 per record or rationally-related sequence of record/letter with enclosures).
 - c. Postage (actual cost).
 - d. RTKL-responsive records maintained or produced by the Department in other than standard 8.5" x 11" printed format or **that** are converted at requester's instruction to media other than the media in which the Department maintains the records (at a unit rate specified on the current fee schedule published by the Governor's Commonwealth Media Center).
2. In coordination with the Deputy Commissioner of Staff, or designee, the AORO shall ensure that all TPRPF charges are rationally based, consistently applied, reasonable, and well-documented. Costs associated with the evaluation of PSP records to determine their public accessibility under RTKL are not chargeable to the requester.
- a. Publish and maintain a current RTKL processing fee schedule, reflecting OOR-required or otherwise reasonable fees. The TPRPF shall be based only on fees and charges specified in the current RTKL processing fee schedule.
 - b. Adopt mechanisms and procedures to capture, calculate, and record costs incurred by the Department to process RTKL requests.
 - c. Create, maintain, and annually audit records of all RTKL processing fees assessed/collected by the Department.
 - (1) Regularly monitor and evaluate the ratio of Department costs incurred to fees assessed for processing RTKL requests.
 - (2) As warranted, recommend appropriate process changes to reduce costs and/or propose reasonable fee increases to offset costs.

- B. Collection of the TPRPF:
1. Within five business days following receipt of a RTKL request, or as soon thereafter as practicable, the AORO shall calculate the TPRPF.
 2. After calculating the TPRPF, the AORO shall promptly notify the requester in writing of the TPRPF and specify the applicable conditions of prepayment.
 - a. To effect this notification, the AORO shall issue a RTKL Processing Fee Prepayment Letter (Appendage M).
 - b. Prepayment of the TPRPF shall be effected by delivery to the AORO of a certified check, bank check, or money order made payable to the "Commonwealth of Pennsylvania" for the entire amount of the fee. The AORO shall neither accept payment of fees by cash or personal check, nor waive payment of applicable fees.
 - c. If the TPRPF exceeds \$100, the AORO shall advise the requester by means of the RTKL Processing Fee Prepayment Letter, as follows:
 - (1) The Department will not begin processing the RTKL request until prepayment of the TPRPF has been effected by delivery to the AORO of a certified check, bank check, or money order made payable to the "Commonwealth of Pennsylvania" for the entire amount.
 - (2) If the AORO does not receive the prepayment within **ten** calendar days of the mailing date indicated on the RTKL Processing Fee Prepayment Letter, then the RTKL request will be deemed denied.
 - d. If the TPRPF is \$100 or less, the AORO shall advise the requester by means of the RTKL Processing Fee Prepayment Letter, as follows:

- (1) As soon as the requested PSP records become available, the AORO will provide the requester with written notice to that effect.

NOTE: To effect this notification, the AORO shall issue a RTKL Request Grant Letter or a RTKL Request Grant/Denial Letter.

- (2) Once the requested PSP records become available, the Department will not provide access to the available records until prepayment of the TPRPF has been effected by delivery to the AORO of a certified check, bank check, or money order made payable to the "Commonwealth of Pennsylvania" for the entire amount.
- (3) If the AORO does not receive the prepayment within **ten** calendar days of the mailing date appearing on the written notification of records availability, the RTKL request will be presumed withdrawn.