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# **GETTING INFORMATION ABOUT YOUR SCHOOL**

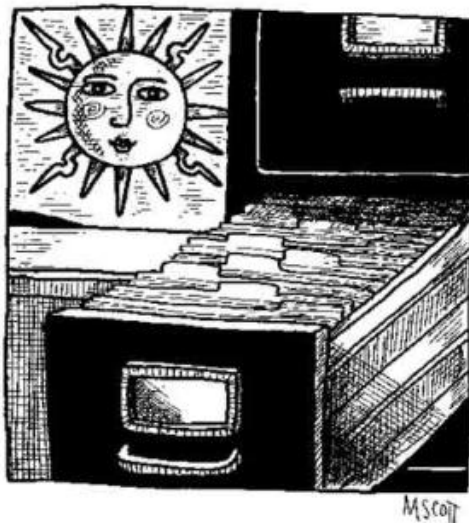
*A Guide to Pennsylvania Laws on  
Open Meetings and Public Records*

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# GETTING INFORMATION ABOUT YOUR SCHOOL

## A Guide to Pennsylvania Laws on Open Meetings and Public Records



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## Introduction

The purpose of this Guide is to give public school parents, students, taxpayers, and other interested persons guidance about two Pennsylvania laws that can help people become better informed, and more involved, in the operation of public education in Pennsylvania. The Pennsylvania Sunshine Act and Pennsylvania Right-to-Know Law provide the public with a way to access information from public schools and other governmental agencies, such as the Pennsylvania Department of Education (PDE), and to learn about decisions that have been made (or might be made) by public school boards, charter schools, Intermediate Units (IUs), PDE, and other agencies.

The updated version of this Guide includes the changes that were made to the Right-to-Know (RTK) Law that went into effect on January 1, 2009. We have also included a *Citizens' Guide* to the Right-to-Know Law written by the Pennsylvania Office of Open Records (Attachment B), and we have revised the sample letters included as Attachments C and D to reflect the changes to the RTK Law. In addition, we have updated the section on the Sunshine Act to address some questions that have come to us from parents about who can speak at an open meeting and when.

We hope you find this Guide to be helpful as you advocate for change in your public school, charter school, or at the State level!

## The Pennsylvania Sunshine Act – Pennsylvania’s “Open Meeting” Law

The Pennsylvania Legislature passed the Sunshine Act<sup>1</sup> in the belief that “secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.” Local agencies such as school districts, intermediate units (IUs), and public charter schools, and state agencies such as the Pennsylvania Department of Education and the State Board of Education, must conduct most of their important business at meetings that are open to the public.

When an agency establishes a committee with the power to make decisions or give advice to the agency, the committee must also discuss and make decisions in public. For example, a court has held that an “Empowerment Team” of parents, school officials, and community members that develops a district improvement plan must conduct its business at meetings which the public can attend.<sup>2</sup>

### Which meetings must be open to the public?

In general, an “open meeting” is any scheduled meeting in which a quorum of agency members plans to discuss “agency business” or take “official action,” which includes making recommendations and decisions, establishing policies, and voting on any motions or resolutions. A decision to hire a school district superintendent, a decision to contract with a food services provider, and the adoption of the school district budget are examples of agency business that must be discussed and voted upon at a meeting that is open to the public. At an open meeting, each member must vote in public, and roll call votes must be recorded.

### Is every meeting open to the public?

No. The law permits some matters to be discussed or voted on in private, or in “executive session.” Usually executive sessions occur in the middle or at the end of a public meeting. Executive sessions which are held at a separate date are still “meetings” as defined by the law and, thus, public notice should be provided, even though public participation is not required.<sup>3</sup>

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<sup>1</sup> This law is cited as 65 Pa. C. S. §§ 701-716. The **full text of the Sunshine Act** can be found at <http://www.openrecordspa.org/sunshine.html> or at [http://www.pa-newspaper.org/web/2005/10/sunshine\\_act.aspx](http://www.pa-newspaper.org/web/2005/10/sunshine_act.aspx) If you do not have Internet access, you can contact ELC for a copy of the law.

<sup>2</sup> *The Patriot-News Company and Thomas Baden v. The Empowerment Team of the Harrisburg School District, et al.*, 763 A.2d 539 (Pa. Commw. 2000).

<sup>3</sup> For a contrary view see *The Borough of East McKeesport, v. The Special/Temporary Civil Service Commission*, 942 A.2d 274, (Pa. Commw. 2008) (expressing doubt that prior public notice is required for separate executive sessions, but not reaching the issue).

Some examples of decisions that can be made in private are:

- Hiring or firing of employees;
- Negotiating disputes between the agency and its employees (for example, bargaining with unions about employees' contracts);
- Considering the purchase or leasing of land or real estate. However, school boards can only sell, purchase, or condemn land at a public meeting;
- Consultations with attorneys or other professional advisors about lawsuits to which the agency is, or may be, a party;
- Discussions of matters which by law are required to be kept private (for example, information about a particular child which cannot be disclosed without the parents' consent).

Section 5-508 of the Pennsylvania Public School Code (Attachment A), has a specific list of the decisions that *must* be adopted at a public meeting *by a majority of all members of the school board*. Examples include levying taxes; adopting the annual budget; setting salaries or compensation for officers, teachers, or other staff appointed by the board of school directors; and adopting courses of study. In addition, while employment decisions of other agencies can generally be made in private, Section 5-508 requires a school board to appoint or dismiss a teacher, a superintendent, an associate or assistant superintendent, and a principal at a public meeting. However, a court has held that a decision regarding which applicants were finalists for a position was not "official action" and could be made in executive session.<sup>4</sup>

Public charter schools are subject to the requirements of the Sunshine Act, but they are not covered by Section 5-508. That means that the governing boards of public charter schools (called "Boards of Trustees") must discuss and decide agency business at public meetings, and give the public all of the rights discussed in this handbook. However, public charter schools are *not required* to make the decisions listed in Section 5-508 by a majority of all of the members of the charter school's Board of Trustees.

## **How can the public find out about an "open meeting?"**

Virtually all meetings of school boards, IU boards, the State Board of Education, and the Committees of the State Board, are "open meetings," that is meetings at which "official action" can be taken. Each year the agency must give notice of its first meeting, and a schedule of the meetings for the year, three (3) days in advance of the first

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<sup>4</sup> *The Morning Call, Inc., et al. v. The Board of School Directors of the Southern Lehigh School District, et al.*, 164 Pa. Commw. 263 (1994).

meeting that says where and when the meeting will be scheduled. The notice must be published in a newspaper which is likely to reach interested parents and community members, and posted at the agency's main office or at the public building where meetings will take place. Notice of a previously unscheduled or rescheduled meeting must be posted at the main office or public building at least 24 hours in advance of the meeting, and must say when and where the meeting will be held. For a reconvened regular meeting, notice does not have to be published in the newspaper. No public notice need be given for an emergency meeting (that is, a meeting convened to deal with a clear and present danger to life or property).

You or your community group can request that written notice be sent to you by asking the agency in writing, and giving the agency a stamped envelope with your address on it. If you anticipate problems, it's a good idea to keep a record of when you sent the request, and when it was received by the agency. In addition, many school boards and other agencies now post their meeting schedules on their websites.

## **Can I speak at the meeting?**

It depends. Agencies are required to provide a reasonable opportunity at each meeting for "residents" or "taxpayers"<sup>5</sup> to comment on matters that the agency is considering or may consider, *prior to the agency taking any official action*. However, agencies can establish rules to help maintain order at meetings. For example, an agency can establish procedures for voting, and can set aside specific times for the public to comment and ask questions. Any agency can also set a time limit for each speaker. It is the Education Law Center's opinion that, if an agency is discussing matters related to an individual child (such as voting on whether to expel the child), the agency *must* allow public comment related to that child prior to taking any official action. However, if an agency is not currently considering matters related to that child, the agency *may* allow those comments.<sup>6</sup>

In addition, if the agency determines that there is not sufficient time, it may postpone public comment until another meeting.

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<sup>5</sup> The law does not define the word "taxpayer." If you have been excluded from making public comment, or warned that you would be excluded, because you were not a taxpayer, ELC would be interested in talking to you about your situation.

<sup>6</sup> *Baravordeh v. Borough Council of Prospect Park*, 706 A.2d 362 (Pa. Commw. 1998) (holding that it is not a violation of the Sunshine Act to limit comments to current business).

*TIP: Make sure you find out the agency's rules about speaking at public meetings before you go to the meeting. Some school boards may require interested parties to sign up to speak BEFORE the meeting is held. Other agencies may require that speakers provide written copies of their comments. For instance, the School District of Philadelphia requires that persons who wish to make public comment at a School Reform Commission (the District's school board) meeting must sign up to speak by 4:30 p.m. the day before the scheduled meeting, and that the speaker must provide 15 copies of her testimony.*

## **What if I have a disability or have difficulty understanding English?**

Agencies are required to make efforts to assist individuals who have disabilities by making reasonable accommodations to allow them to attend or participate in a meeting. For example, a person with a hearing impairment may be entitled to the assistance of a sign language interpreter at a public meeting. People who need disability-related accommodations should make a written request to the agency, and try to obtain some form of verification that the request was received.

For individuals who are non-native English speakers, in the Education Law Center's opinion, the agency has the obligation to provide the translation and interpretation services necessary to enable non-native speakers to provide public comment. Agencies may also be obligated to translate their proceedings, on request, in certain circumstances. People who need these services should request them in writing, if possible, and follow up to make sure that the agency received the request.

## **What if I missed a meeting and I want to know what happened?**

Agencies must keep detailed minutes of open meetings. The minutes must include the time, date, and place of the meeting, a list of the members present, a description of the official action taken, a record of how the members voted on roll call votes, and the names of the persons who testified and the subject of their testimony. These minutes, once approved, become public documents which are available under the Pennsylvania Right to Know Act, which is discussed later in this booklet.

In addition, anyone attending an agency meeting has the right to use recording devices to record the proceedings.<sup>7</sup> The agency, however, can set reasonable rules for the use of recording devices.

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<sup>7</sup> See 65 Pa. C.S. § 711(a).

## What can I do if I think the law has been violated?

Any person has the right to raise objections during a meeting if she believes that the Sunshine Act is being violated. A person who thinks that the law has been violated (for example, notice of a meeting was not given or decisions that should have been made in a public meeting were made in private) may also take legal action.

A person can file a lawsuit against the agency within **30 calendar days** of an open meeting where the law was violated, or within 30 calendar days of finding out that the law was violated by the agency in a closed meeting. In no case can a lawsuit be filed more than one year from the date of the meeting at which the illegal conduct took place. Lawsuits against state agencies are filed in Pennsylvania Commonwealth Court, and lawsuits against local agencies are filed in the local Court of Common Pleas.

If the court determines that the Sunshine Act was violated, it may invalidate some, or all, of the agency business that took place at the meeting. The court may also fine agency members who intentionally violate the Sunshine Act \$100. If the court determines that the agency deliberately or very carelessly violated the Act, it can order the agency to pay for the legal costs of the person filing the lawsuit. If the court decides that the lawsuit was brought with no real justification, the party bringing the lawsuit can be ordered to pay the agency's legal costs.

## What are my chances in court?

It is worth noting that courts have wide discretion to decide whether to punish violations of the Sunshine Act, and have generally been reluctant to do so unless it is proven that the violations were intentional or the result of fraud. Courts have consistently ruled that, short of fraud, most Sunshine Act violations should, for reasons of efficiency, be "cured" by repeating any official actions, conducted in violation of the law, in a future meeting that is properly held in public with notice.<sup>8</sup> It is difficult to prove intentional violations of the Act; for this reason, many commentators have complained that the Pennsylvania Sunshine Act does not have strong enough penalties to force compliance by government agencies.<sup>9</sup>

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<sup>8</sup> See *Borough of East McKeesport v. The Special/Temporary Civil Service Commission*, 942 A.2d 274, 280 (Pa. Commw. 2008); *Lawrence Co. v. Brenner*, 582 A.2d 79, 84 (Pa. Commw. 1990).

<sup>9</sup> See Casey, Christopher and Erin Galbally, *It's Time to Put Some Bite in Pa. Sunshine Act*, The Philadelphia Inquirer, April 19, 2009 (available at [http://www.philly.com/inquirer/currents/20090419\\_It\\_s\\_time\\_to\\_put\\_some\\_bite\\_in\\_Pa\\_Sunshine\\_Act.html](http://www.philly.com/inquirer/currents/20090419_It_s_time_to_put_some_bite_in_Pa_Sunshine_Act.html)); Henning, Teri, *What's Wrong with the Sunshine Act*, Pennsylvania Newspaper Association (available at [http://www.pa-newspaper.org/web/2005/10/whats\\_wrong\\_with\\_the\\_sunshine\\_act.aspx](http://www.pa-newspaper.org/web/2005/10/whats_wrong_with_the_sunshine_act.aspx)).

## The “Right-to-Know” Law – Pennsylvania’s Access to Public Records Law

In January 2009, Pennsylvania’s new and substantially revised Right-to-Know (RTK) Law went into effect. The Right-to-Know Law requires government “agencies” to make their “public records” available for examination and copying to any legal resident of the United States who makes a proper request.

The law explains which documents are open to U.S. residents and how requests should be made. **Most importantly, the new law presumes that all agency records are public and shifts the burden 100% onto agencies to prove that a record falls under one of the law’s exceptions.**

The new law also created a governmental agency called the Pennsylvania Office of Open Records (OOR) to provide the public with information about the law, to train agencies and officials about the law, and to decide initial appeals from an agency’s refusal to provide access to a document.<sup>10</sup> The new law also imposes strict deadlines within which state and local agencies must respond to written requests and penalties for noncompliance with the law. This can be a complicated area, and this booklet gives only a brief overview.<sup>11</sup>

### What is an “agency?”

The Right-to-Know Law only applies to governmental “agencies” which are defined as a Commonwealth agency, local agency, a judicial agency, or a legislative agency. The law then defines each of these in more detail. Examples of Commonwealth agencies include the Pennsylvania Department of Education, the Governor’s Office, and the Pennsylvania Interscholastic Athletic Association (PIAA). Legislative agencies include the Pennsylvania Senate, the Pennsylvania House of Representatives, and the Independent Regulatory Review Commission (IRRC). Judicial agencies include courts or any other entity of the judicial system.

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<sup>10</sup> You can visit the agency on-line at <http://openrecords.state.pa.us>. The agency has provided some helpful forms and information about the law, including a five-page “Citizens’ Guide.” The authors of this booklet would like to acknowledge the “Citizens’ Guide” as a key source of formation for the discussion of the Right-to-Know Law in this booklet. The full text of the most recent version is available in Attachment B at the end of this document.

<sup>11</sup> The full text of the law can be found at [https://www.dced.state.pa.us/public/oor/pa\\_righttoknowlaw.pdf](https://www.dced.state.pa.us/public/oor/pa_righttoknowlaw.pdf). If you do not have Internet access, you can contact ELC for a copy of the law. Two additional resources for information on the Right-To-Know Law are the website for the Pennsylvania Newspaper Association, at [http://www.pa-newspaper.org/web/2008/02/open\\_records\\_law.aspx](http://www.pa-newspaper.org/web/2008/02/open_records_law.aspx) and the website for the Pennsylvania Freedom of Information Coalition, at <http://www.openrecordspa.org/>, which provides summaries of each Final Determination from the Office of Open Records organized by issue.

Public schools, including charter schools and cyber charter schools, and other local governmental entities are considered local agencies.

Even private organizations that either perform “essential government functions,” are created by the Constitution of Pennsylvania or another law, or have a sufficient governmental connection may also be considered agencies. Public funding alone does not convert a private entity into a public one and the key issue is the amount of governmental control over the organization. For example, a private not-for-profit corporation which received grant funding from the Department of Labor and Industry was not found to be an agency.<sup>12</sup> Meanwhile, a fire company established as a non-profit corporation, funded for the most part by a charitable organization, and comprised entirely of volunteer firefighters, qualified as a local agency and was subject to the RTK Law.<sup>13</sup> In addition, a private educational management organization which contracts to run a public school is performing an “essential government function,” and thus all records related to that function are considered are subject to the RTK Law.<sup>14</sup>

## What is a “public record?”

The new Right-to-Know Law substantially expanded the definition of a public record. The law now begins with a presumption that *any* record in the possession of a government agency is publicly available – both for viewing and copying. Public records specifically include **financial records**, such as any account or contract for giving or receiving money, or for the agency’s buying, use, or selling of services, equipment, materials, supplies, or property.

The presumption that a record is a public record does not apply to “privileged” information.<sup>15</sup> The law also has **30 exceptions**, which allow an agency to withhold records. The following is a summary of the exceptions most likely to be cited by an agency in possession of records related to public education:

- Records which, if disclosed, would be likely to result in physical harm, personal security, or the loss of Federal or State funds;

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<sup>12</sup> *In re, Sean Donahue v. Wall Street West*, Final Determination of the Pa. Office of Open Records, Doc. No. AP 2009-0221, April 22, 2009 (available at [https://www.dced.state.pa.us/public/oor/fd/2009Apr/2009-0221\\_Donahue-%20Wall\\_St\\_West\\_FD.pdf](https://www.dced.state.pa.us/public/oor/fd/2009Apr/2009-0221_Donahue-%20Wall_St_West_FD.pdf)).

<sup>13</sup> *In re, John Brown v. Frystown Community Fire Co.*, Final Determination of the Pa. Office of Open Records, Doc. No. AP 2009-0199, April 20, 2009 (available at [https://www.dced.state.pa.us/public/oor/fd/2009Apr/2009-0199\\_Brown\\_Community\\_Fire\\_Co\\_of\\_Frystown\\_FD.pdf](https://www.dced.state.pa.us/public/oor/fd/2009Apr/2009-0199_Brown_Community_Fire_Co_of_Frystown_FD.pdf)).

<sup>14</sup> *In re, Dan Hardy v. Chester Community Charter School*, Final Determination of the Pa. Office of Open Records, Doc. No. AP 2009-0205, May 8, 2009 (available at [https://www.dced.state.pa.us/public/oor/fd/2009May/2009-0205\\_Hardy-Chester\\_Community\\_Charter\\_School\\_FD.pdf](https://www.dced.state.pa.us/public/oor/fd/2009May/2009-0205_Hardy-Chester_Community_Charter_School_FD.pdf)). This case was appealed to State Court on June 8, 2009.

<sup>15</sup> The law defines privilege as the “attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege, or other privilege recognized by a court interpreting the laws of this Commonwealth.”

- Records which, if disclosed, would endanger the safety of a building, computer system, or other personal information (such as medical records, Social Security numbers, personal financial information, phone numbers, mailing addresses, or personal e-mail address);
- Records relating to agency employees (academic transcripts, performance reviews, or written criticisms of an employee);<sup>16</sup>
- Records relating to or resulting in a criminal investigation, victim information, or noncriminal internal investigations;
- Records relating to labor relations negotiations (but final contracts or agreements between the parties in collective bargaining are public records);
- Agency document drafts (such as drafts of a bill, regulation, or statement of policy);
- Internal, pre-decisional deliberations of an agency (including records that relate to deliberations about a budget recommendation, legislative proposal, or a proposed policy);
- Agency employees' personal notes;
- Draft minutes of an agency meeting and minutes of an executive session and any record of discussions held in executive session;
- Academic transcripts and examinations;
- Real estate appraisals, engineering or feasibility estimates, and environmental reviews related to leasing , buying, or selling real property or to construction projects;
- Requests for proposals and bids prior to the award of the contract;
- Agency communications with its insurance carrier; and
- The name, address, or date of birth of a child under age 17.

When denying a request, the agency must cite to legal authority and explain why the document is exempt. Merely referring to an exception without any explanation is not sufficient to meet the burden of proving that a record is exempt.<sup>17</sup>

## **What if only part of the record is “public?”**

If a public record contains some information that falls under an exception (such as the name, address, or date of birth of a child), the agency is still required to release the record, but it may redact (strike-out) the non-public information. Redaction is still considered a “denial” of that part, so the agency must give a reason and cite to supporting legal authority.

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<sup>16</sup> This exception applies even if the request for personnel files is made by the employee who is the subject of such files. See *In re, Rech v. Dept. of Educ.* Final Determination of the Pa. Office of Open Records, Doc. No AP 2009-0034, Mar. 2, 2009 (available at <https://www.dced.state.pa.us/public/oor/fd/2009-0034RechDeptofEducation.pdf>).

<sup>17</sup> *In re, Wallace v. Sch. Dist. of Lancaster*, Final Determination of the Pa. Office of Open Records, Doc. No. AP 2009-0010, p. 5 Feb. 19, 2009 (available at <https://www.dced.state.pa.us/public/oor/fd/2009-0010WallaceLancasterSDFD.pdf>).

## Can a “record” be more than a paper document?

Yes. A “record” includes paper documents (like letters, contracts, meeting minutes, etc.). The term also includes tapes, photographs, film or audio recordings, information stored or maintained electronically, and data-processed or image-processed documents (like something kept as a “PDF” file). E-mails can also be a form of public record, subject to any exceptions.

## What kinds of public records could I request from a school district, charter school, or from the Pennsylvania Department of Education?

The following are some examples of records you might want to access from your school district, charter school, or the Pennsylvania Department of Education:

- Minutes of a school board meeting or a charter school’s Board of Trustees;
- Budgets adopted by a school board (or other financial statements);
- A school district’s collective bargaining agreement with its teachers or principals (if appropriate) (or, if there is no union, then individual employee contracts);
- The superintendent’s contract or Chief Executive Officer’s contract;
- Policies adopted by the school board or a charter school’s Board of Trustees, such as its student discipline and student attendance policies;
- Plans for school construction projects (*but* engineering or feasibility estimates and environmental reviews made by an agency related to construction projects are *not* considered to be public records);
- Copies of school plans required by law, such as:
  - A school district’s strategic plan (required under Chapter 4 of Pennsylvania’s education regulations);
  - A school district’s special education plan (required under Chapter 14 of Pennsylvania’s education regulations);
  - Pennsylvania Accountability to Commonwealth Taxpayer Plans (PA-PACT Plans);
  - Federal Programs Consolidated Application to State (includes Title I, II, III, V, and others) (including all the ways the district must inform parents of its compliance with the No Child Left Behind (NCLB) Act);
  - School Improvement and/or Corrective Action Plans (where appropriate);
  - School district Empowerment Plan (where appropriate);
  - School district Technology Plan; and
  - School district Five-Year Plan for Career and Technical Education Programs.
- Mandate Waivers filed by the school district (the Mandate Waiver Program permits school boards to seek waivers from compliance with certain provisions of the Pennsylvania Public School Code, the State Board of Education regulations and

- standards of the Secretary of Education);
- School and district results on the Pennsylvania System of School Assessment (PSSA);
- Expulsion decisions issued by a school district or charter school (with student's name redacted) (Please note that some districts or charter schools may argue that even redacted records related to individual students are exempt from public disclosure under the Family Education Rights and Privacy Act (FERPA). The Pennsylvania courts have yet to rule on this issue as of the date of this publication.);
- Contracts with private providers – both companies and individual consultants;<sup>18</sup>
- Reports concerning the performance of a charter school written by a school district or the Pennsylvania Department of Education;
- Reports concerning performance of private providers with whom the school district or charter school contracts for services;
- Results of governmental monitoring visits (state and federal);
- Copies of notices, school information, and other school documents translated into other languages; and
- Copies of parental requests to determine if their child is taught by a highly qualified teacher under the No Child Left Behind (NCLB) Act and the district's responses.

## How do I make a request for a public record?

The Right-to-Know Law requires each agency to designate an employee as an "Open- Records Officer" and post that person's contact information at the agency and on the agency's website. (Some agencies use the term "Right-to-Know Officer.") You can request a record by giving, mailing, e-mailing, or faxing a written request to the agency's Open-Records Officer. You can also make a verbal request. However, the process and the timelines described in this booklet do not apply unless you have made a proper **written request** to the agency's Open-Records Officer. You do not have to state why you are requesting the records and you may even make the request anonymously, however you **must provide a name and address of who and where the agency should send its answer.**

The agency must also provide a **form** that can be used to file a request. Agencies can create their own unique forms or use the uniform form created by the Pennsylvania Office of Open Records. (A copy of the Right-to-Know Uniform Request Form can be found at, <http://openrecords.state.pa.us>). However, you are not required to use any of these forms as long as you include all the necessary information described below. (Attachment C at the end of this document provides an example of a request sent without a form.)

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<sup>18</sup> See, *In re, Green v. Quakertown Community Sch. Dist.* Final Determination of the Pa. Office of Open Records, Doc. No. AP 2009-0041 Feb. 19, 2009 (available at <https://www.dced.state.pa.us/public/oor/fd/2009-0041GreenQuakertownSDFD.pdf>).

You should make sure that you **describe as specifically as possible the records you want**. The Office of Open Records has explained that “a request is not sufficiently specific if it does not set forth a subject matter for the communications, nor identify a specific and relatively limited number of people as senders and/or recipients of the communication.”<sup>19</sup> For example, a request for any record reflecting “any business activity of the School District and/or Board” was considered too broad and failed to sufficiently specify the subject of the records requested.<sup>20</sup>

There is no limitation on the number of different public records that you can request to see or have copied, but the agency may deny a requester access to a record if the requester has made repeated requests for that same record.

The agency only has to give you the record in the form in which it is maintained by the agency – it is not obligated to compile information differently, create a record which does not currently exist, or to change the record’s format. For example, if you ask for the record in electronic form, and the agency maintains the record only in paper form, the agency does not have to give you an electronic version of the record. However, if an agency maintains an existing data base, it may be required to print out reports fueled by the data base even if the agency has never printed out the report for itself.<sup>21</sup> In addition, an agency can make a public record available through any publicly accessible electronic means, or the agency may arrange for the person requesting the document to inspect it at the agency’s office. If properly requested in writing, the agency must provide the requester with a paper copy of the record.

## **What fees can I be charged for viewing or copying public records?**

The agency cannot charge you anything for merely viewing records in person and the agency can choose to waive all fees if it feels that it is in the public’s interest. However, agencies may charge “reasonable” fees for copying, printing, or faxing their records. How much is reasonable is based on local business rates as determined by the Office of Open Records.<sup>22</sup> The agency cannot charge you when it reviews the document to determine if it is a public record. Neither can the agency charge for the process of redacting (taking out) non-public material. If you want a certified copy of the record, the agency can charge a reasonable fee. If the agency is willing to offer a paper copy, and you want an electronic copy, it can charge a reasonable fee as established by

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<sup>19</sup> *In re, Mollick v. Methacton Sch. Dist.*, Final Determination of the Pa. Office of Open Records, Doc. No. 2009-0180 p. 7 April 10, 2009.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> See *In re, Knauss v. Unionville-Chadds Ford Sch. Dist.*, Final Determination of the Pa. Office of Open Records, Doc. No. AP 2009-0060 Mar. 11, 2009 (requiring school to print out and redact a copy of a master student schedule that was available in database form, but never printed in the requested form by the district) (see [https://www.dced.state.pa.us/public/oor/fd/2009-0060\\_Knauss\\_Unionville\\_Chadds\\_Ford\\_SD.pdf](https://www.dced.state.pa.us/public/oor/fd/2009-0060_Knauss_Unionville_Chadds_Ford_SD.pdf)).

<sup>22</sup> Effective January 1, 2009, the Office of Open Records has set the duplication fee for local agencies between 10 to 25 cents per page. Agencies may charge more for copying oversized documents, but only a fee equal to the actual cost.

the Office of Open Records. Postage fees may not be more than the actual cost of mailing to you.

If the total fees are expected to exceed \$100, the agency can require that you pay it before giving you access to, or copies of, the information.

## **What must the agency do after it receives my request?**

An agency has **five (5) business** days to respond in writing to your request. *It must do one of three things.* It must either: 1) grant the request, 2) deny the request and explain its reason why in writing (citing the legal basis for its denial), or 3) explain that it needs a 30–calendar-day extension to respond.

The five-business-day clock starts the day the request is received during regular business hours. It is a good idea to send the letter by certified mail so that you know when the agency received it.

Acceptable grounds for a **30-calendar-day extension** include: the need to remove (redact) non-public information; the document must be retrieved from an off-site location; the agency does not have enough staff to retrieve the requested records; legal advice is needed as to whether the document is a public record; the requester failed to follow agency policy regarding access to records; or the requester did not pay the applicable fees.

In its notice denying the information that you requested, the agency must explain why it denied your request, including any laws it is relying upon, the name of the Open-Records Officer (including phone, address, and title) making the decision, the date of the decision, and the procedure for taking an appeal.

## **What if the agency does not respond to my request at all?**

If the agency does not respond to a request within five business days, or within 30 calendar days after the five business days it sought an extension, the request is “**deemed**” denied and you can use the appeal process as described below.

## **What can I do if the agency refuses to give me access to a record?**

You can file an appeal within **15 business days** of the *mailing date of the agency’s response*. In most cases, the Office of Open Records will hear the appeal.<sup>23</sup>

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<sup>23</sup> In cases involving a judicial or legislative agency, or requests to law enforcement agencies, an appeal is filed with a designated appeals officer. Agencies must post contact information for the Office of Open Records or the designated appeals officers.

The appeal must state the reason why you think the document is a public record, and why you think the agency's reason for denying your request is wrong. (Uniform appeal forms are available at <http://openrecords.state.pa.us> and a sample appeal letter is included with this Guide as Attachment D.)

You must provide two copies of your appeal to the Office of Open Records. You must also send a copy of your appeal to the agency that denied your request.<sup>24</sup>

Unless you agree to an extension, the Office of Open Records must make a final decision (called a "Final Determination") on your appeal within **30 calendar days** of the date the Office received your appeal. The Final Determination must include a written explanation of the reason for the decision. The Office of Open Records can also decide to hold a hearing, but that does not automatically extend the time period. In most cases, the Office of Open Records will issue a Final Determination based on information provided to the Office without holding a hearing.

When the Office of Open Records issues a Final Determination, it is binding on the agency. If you (or the agency) want to appeal the Office's ruling, the appeal must be filed with the appropriate court within **30 calendar days** of the mailing of the Final Determination by the Office.

## Can I appeal a Final Determination?

Yes. *Within 30 calendar days of the mailing date of the Office of Open Records' Final Determination or within 30 calendar days of the date a request for access is deemed denied, you can file an appeal in court.* If the decision is related to a request for records from a state agency, such as the Pennsylvania Department of Education, you must file in Commonwealth Court. If a local agency, such as a school district, has denied you access to a document, you file with the local Court of Common Pleas. The Court's decision will be based on your request and appeal, the agency's responses, the appeals officer's determination, and the hearing transcript if there was a hearing. (A standard appeal form is available at <http://openrecords.state.pa.us>. A sample appeal letter is also provided as Attachment D.)

## Are there any penalties if I win (or lose) an appeal?

The court can impose a civil penalty up to \$1,500 on an agency that denies access

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<sup>24</sup> The Office of Open Records has said that you should send two copies of your appeal to the Office and one copy to the agency, but this requirement is not actually in the law. Make sure to check with the Office of Open Records about its appeals procedures to find out if any of the rules have changed. Once again, the website for the Office is <http://openrecords.state.pa.us>, and the Office's phone number is 717-346-9903. As of the date of the writing of this booklet, the Office had developed Interim Guidelines to govern the appeals process. These Interim Guidelines can be found at: <https://www.dced.state.pa.us/public/oor/rtkinterimappealsguidelines.pdf>.

in bad faith. No agency or agency official can be sued for monetary damages, but an agency or official who does not promptly comply with a court order can be fined \$500 per day until the document is produced. In addition, if the court finds that the agency had no reasonable legal or other basis for denying you access to a public record or acted in bad faith, it can order the agency to pay your litigation costs. Likewise, if the court decides that you had no reasonable basis for your appeal, it can order you to pay the agency's costs.

## ATTACHMENT A

24 P.S. § 5-508. Majority vote required; recording

The affirmative vote of a majority of all the members of the board of school directors in every school district, duly recorded, showing how each member voted, shall be required in order to take action on the following subjects:

- Fixing length of school term.
- Adopting textbooks.
- Appointing or dismissing district superintendents, assistant district superintendents, associate superintendents, principals, and teachers.
- Appointing tax collectors and other appointees.
- Adopting the annual budget.
- Levying and assessing taxes.
- Purchasing, selling, or condemning land.
- Locating new buildings or changing the locations of old ones.
- Dismissing a teacher after a hearing.
- Creating or increasing any indebtedness.
- Adopting courses of study.
- Establishing additional schools or departments.
- Designating depositories for school funds.
- Entering into contracts of any kind, including contracts for the purchase of fuel or any supplies, where the amount involved exceeds one hundred dollars (\$100).
- Fixing salaries or compensation of officers, teachers, or other appointees of the board of school directors.
- Entering into contracts with and making appropriations to the intermediate unit for the district's proportionate share of the cost of services provided or to be provided for by the intermediate unit.

Failure to comply with the provisions of this section shall render such acts of the board of school directors void and unenforceable.

## ATTACHMENT B

### Citizens' Guide (Current as of May 2009)



The Mission of the Office of Open Records is to enforce the state's Right-to-Know Law and to serve as a resource for citizens, public officials and members of the media in obtaining public records of their government. As part of that mission, the Office of Open Records has established a short "**Citizens' Guide**" that will provide a basic overview of the Right-to-Know Law.

Agencies are reminded to ensure that citizens are provided access to records to which they are entitled. Equally important, the Office of Open Records reminds citizens to use good judgment in seeking records from the public body and not use this law to harass or overburden a public body from performing its other functions. The Office of Open Records reminds both citizens and agencies that when the law takes effect in January, the process initially may not be seamless. The Office of Open Records encourages patience and a spirit of cooperation among all parties.

As always, if you have any questions or need more information please contact the Office of Open Records at (717) 346-9903 or [openrecords@state.pa.us](mailto:openrecords@state.pa.us).

#### **PRESUMPTION OF OPENNESS: Records are Public Unless....**

The most significant change to the Right-To-Know Law is that all records are presumed to be public records unless disclosure is barred by: 1) state or federal law or regulation, or judicial order; or 2), privilege, e.g., attorney-client, doctor-patient, or 3) one of the exceptions in Section 708 of the Right-to-Know Law.

The burden is now 100 percent on the Agency to establish why the record is not available.

#### **WHO IS SUBJECT TO THE LAW: Agencies Must Comply**

**Commonwealth Agencies:** Any office, department, authority or other parts of the executive branch, state-affiliated entities, independent agencies, and includes the Governor, Attorney General, Auditor General and the Treasury Department.

**Local Agencies:** Any political subdivision, intermediate unit, or charter, public trade or vocational school [or] any local, intergovernmental, regional or municipal agency, authority, council, board commission or similar governmental entity.

**Legislative Agencies:** The Senate, House of Representatives and many committees and commissions like the Capitol Preservation Committee, the IRRRC, Center for Rural Pennsylvania, the Legislative Reapportionment Commission, and Legislative Audit Advisory Commission to name a few. For a complete list, see Section 102.

**Judicial Agencies:** Any entity or office of the unified judicial system, like Magisterial District Judges

### **WHAT IS COVERED BY THE LAW: Records, not Questions**

Make sure when you file a RTK request, you are seeking **records** and not just asking questions. The law governs release of **records**.

A record is defined as “any information regardless of its physical form or character that documents a transaction or activity of an agency **AND** is created, received, or retained pursuant to law OR in connection with a transaction, business or activity of an agency.”

Records can take many forms, including papers, letters, maps, books, tapes, photographs, film or sound recordings, information stored or maintained electronically and a data-processed or image-processed documents. Note that e-mails can also be a form of public records, subject to any exceptions.

### **EXCEPTIONS: Protects Certain Information From Disclosure**

The law contains 30 exceptions, cited in Section 708, that permit an Agency to withhold records. An Agency may deny release of a record if it falls within one of the 30 exceptions designed to protect information that is confidential or may jeopardize safety or investigations. Types of records that can be withheld include records related to personal or public security, DNA/RNA records, autopsy records, social security numbers, personal financial information, *personal email* addresses, marital status, identity of a covert law enforcement officer, home address of judges or law enforcement, confidential source records, victim information.

### **HOW TO FILE A REQUEST**

A citizen can file a Right-to-Know request in four ways. You can submit your request by:

1. Fax
2. Electronic mail

3. In person
4. U.S. Mail

The first thing a citizen should do to file a RTK request is check with the local or Commonwealth Agency to determine the Open Records Officer (each Agency must have one) and whether the Agency has a Right-to-Know request form. You can always use the Uniform Request Form available on our website to file a request. Address your request to the Open Records Officer. Some Agencies use the term “Right-to-Know Officer.”

You should make sure that your request for records is **specific and concise**. Identify as specifically as you can the records you want, so that an Agency can quickly locate them and determine whether they are public record.

Please be advised that if you send an e-mail request or file a request in person it does not speed-up the time that an Agency has to respond to your request. An Agency has five business days to respond to a request, whether you place the request in person or by mail.

### **WHAT TO EXPECT FROM THE AGENCY**

An Agency has **five business days** to respond in writing to: 1) grant the request, 2) deny the request (citing the legal basis for denial/partial denial) or 3) invoke a 30-day extension for certain reasons.

The clock starts the day after the request is received during regular business hours.

Acceptable grounds for a 30-day extension includes: off-site location of records, staffing limitations, need for legal review or redaction, complex request, or requester did not pay applicable fees as required, or failed to follow Agency policy.

If an Agency does not respond to a request in the allotted time, the request is deemed denied, and you have the right to file an appeal with the Office of Open Records.

### **HOW TO FILE AN APPEAL?**

If an Agency denies a record, or a portion of a record, the requester can file an appeal with the Office of Open Records.

The appeal must be submitted to the Office of Open Records within 15 business days of the mailing date of the Agency’s response. Appeals should be sent to the Office of Open Records, Commonwealth Keystone Building, 400 North St., 4th Floor, Harrisburg, PA 17120-0225. They may also be submitted via facsimile to 717-425-5343

or via email to [openrecords@state.pa.us](mailto:openrecords@state.pa.us) as a Microsoft Word or PDF attachment.

All appeals must be in writing and shall include the following information that may be submitted using the Appeals Forms found on <http://openrecords.state.pa.us>:

- a. The Complainant's (requester's) full name, address, telephone and fax number; and
- b. A concise statement of relevant facts including, but not limited to:
  1. The name, title, address, telephone and fax numbers, if known, of the Agency and any Agency official alleged to have denied the requester a right conferred by the RTK Law;
  2. A description of the records requested;
  3. The date of the Right-to-Know request;
  4. The date of any response or the date the response was deemed denied;
  5. A statement of the grounds upon which the requester asserts that the record is a public record;
  6. A statement addressing any grounds stated by the Agency for delaying or denying the request, including any unusual circumstances or emergency situations that may have contributed to the delay;
  7. A copy of any pertinent correspondence or other documents; and
  8. A statement that all material provided by the Agency has been submitted with the appeal.

You must submit two copies of the material to our Office. You must also submit a copy of your appeal to the Agency that denied your request.

When the Office of Open Records receives the appeal, it has 30 days to respond from the date of receipt of the appeal to issue a Final Determination.

The Office of Open Records may conduct a hearing (which is a non-appealable decision). It may decide the case on the basis of the information filed with the Office. It may seek additional information from the involved parties. In most cases, the Office of Open Records will issue a Final Determination based on information provided to our Office without conducting a hearing.

<https://www.dced.state.pa.us/public/>

When the Office of Open Records issues a Final Determination it is binding on the Agency. If the Agency or the requester want to appeal the ruling of the Office of Open Records, the appeal must be filed with the appropriate court within 30 days of the mailing of the Final Determination by the Office.

### **FEES**

The fee for a standard 8 1/2 x 11 black and white document is 10 cents to 25 cents per page.

- Postage fees may not exceed the actual cost of mailing.
- If an Agency offers enhanced electronic access it can establish user fees that must be approved by the Office of Open Records.
- An Agency cannot charge for the time it takes to redact a document or the legal review needed to determine if a document is a public record.
- An Agency may require pre-payment if the fees are expected to exceed \$100.

### **PENALTIES**

The law provides a civil penalty of up to \$1,500 if an Agency denies access to a public record in bad faith and up to \$500 per day when an Agency does not promptly comply with a court order to release records under the act.

### **ATTORNEYS FEES**

If a court holds that records were denied based on an unreasonable interpretation of law, or in bad faith, an Agency can be required to pay attorneys' fees. **Remember --** if your RTK request is deemed frivolous by the court, you can be required to pay attorneys' fees.

## ATTACHMENT C

### Sample Letter to Request a Public Record

*The letter can be delivered in person, by mail, by fax, or by e-mail. **Keep a copy of this letter for your records.** Get written confirmation that your request has been received by the agency (for example, send your request by certified mail).*

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*[Date]*

*[Name and address of the open records officer. This information should be posted at the agency and on the agency website, if there is one.]*

RE: Right-to-Know Request

Dear *[Name]*:

I am a resident of the United States, and I am writing because I would like to inspect and get copies of the items listed below. *[You should specify if you want to inspect the records, if you want copies of the records, or if you want certified copies (Note: agencies can charge significantly more for certified copies).]* I believe that these documents are public records under the Pennsylvania Right-to-Know Law. *[Some options that might apply: If the agency keeps any or all of these documents in electronic form, I would like to receive copies in that form; I would like to receive a paper copy of the records even if the agency ordinarily keeps the records in electronic form.]*

*[List the documents you are requesting as **specifically** as possible. For example: Minutes from the Best Chance School District meeting of the School Board held on July 15, 2002].*

Please send the records to the name and address listed below.

Please let me know if I will be charged any fees for copying the records. I understand that the agency can waive fees, and I hope that you will do so in my case. I would be happy to duplicate the records myself, and I also think that providing the records to me free of charge would be in the public interest. *[Explain why.]*

I look forward to your prompt response to this request.

Sincerely,

*[ Name – Must be signed]  
[Mailing Address]  
[Telephone Number (Optional)]*

## ATTACHMENT D

### Sample Letter of Appeal from an Agency's Denial of Records

*The appeals officer must receive an appeal within **15 business days** of denial or "deemed" denial. **You should keep a copy of this appeal for your records**, and get written confirmation that your appeal has been received by the appeals officer (for example, send your appeal by certified mail).*

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*[Date]*

Executive Director  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

RE: Right-to-Know Law Appeal – Denial *[or Deemed Denial or Partial Denial]* by Agency

Dear *[Name]*:

Enclosed is my written appeal from the decision of *[include agency's name & address]* not to allow me to inspect and copy the documents listed below under the Pennsylvania Right-to-Know Law. Enclosed are copies of my original request and the written response of the agency. I submitted my request on *[date of request]*. *[If the request was "deemed denied," explain the circumstances, such as the agency did not send a written response within 5 business days, or the agency set a date for reviewing the record and providing a response that was longer than 30 additional calendar days.]*

*[List documents as specifically as possible.]*

I believe that the agency did not meet its burden of proving that these documents are either not public records or are exempt. *[If the request was deemed denied, you should still explain why you believe the records are public records. If the agency explained why it was denying the request, you should address the grounds the agency relied upon to issue its denial.]*

*[For Example]*

*The surveys of teachers regarding student drug and alcohol problems in our school district document an activity of the school district, which is an agency. The surveys are therefore public records. They are not exempt under the Right-to-Know Law or any other law. I disagree with the school district's claim that releasing the records would reveal which teachers responded to the survey and would*

*compromise their security. The Right-to-Know Law states that an agency cannot “deny access to the public record if the information which is not subject to access is able to be redacted.” The school district is therefore required to remove the information from the surveys that would identify the teachers who responded, and then to release the surveys to me.*

My request was *[denied or deemed denied]* on *[date]*.<sup>\*</sup> The name and title of the agency office who denied the request for records is *[provide name & title of official]*. This written appeal has been filed with you within the 15 business days of the mailing date of the agency’s denial as permitted by the Right-to-Know Law, and you must make a final decision on this appeal within 30 calendar days. Please contact me immediately at *[phone number & address]* if you plan to hold a hearing on this matter so that I may make arrangements to attend.

I anticipate your timely response to this appeal.

Sincerely,

*[Name – Must be signed]*

*[Mailing Address]*

*[Telephone Number]*

*[Fax Number (if available)]*

Enclosures: Request & Agency Response

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\* If a request is “deemed denied” by an agency’s failure to respond and provide the documents, the date of the denial is 5 business days from the date the agency received your request. If the agency invoked an extension of time to respond, the date is 30 calendar days from the end of the 5 business days the law generally allows for a response.

## ATTACHMENT E

### GLOSSARY OF ACRONYMS AND ABBREVIATIONS

IRRC	Independent Regulatory Review Commission. The IRRC is an independent agency of Pennsylvania government responsible for reviewing all regulations proposed by nearly all departments, boards, commissions, and agencies of state government. IRRC’s website is: <a href="http://www.irrc.state.pa.us">www.irrc.state.pa.us</a> .
IU	Intermediate Unit. Pennsylvania’s 29 Intermediate Units are regional education service agencies charged with providing programs and services to public, private and non-public (religious) schools.
NCLB	No Child Left Behind Act. Requires statewide testing geared to state’s academic standards and designed to eliminate or at least reduce educational gaps between groups of students including students with disabilities, low-income students, minority students, and English language learners. Establishes consequences for schools and school districts that fail to make Adequate Yearly Progress (AYP).
OOR	Pennsylvania Office of Open Records. The website for the OOR is: <a href="http://openrecords.state.pa.us">http://openrecords.state.pa.us</a> .
PDE	Pennsylvania Department of Education. State agency responsible for overseeing the provision of education and educational services to all children within the State. PDE’s website is: <a href="http://www.pde.state.pa.us">www.pde.state.pa.us</a> .
PSSA	Pennsylvania System of School Assessment. Statewide test measuring student proficiency on state academic standards.
RTK or RTKL	Right-to-Know Law.
State Board of Education	Pennsylvania State Board of Education. The State Board of Education was established by Pennsylvania’s legislature to be the main administrative regulatory body for elementary/secondary and higher education in Pennsylvania. In addition to issuing regulations, the Board has the authority to “adopt broad policies and principles and establish standards governing the educational program” of Pennsylvania.