

STATEMENTS OF POLICY

Title 104—GENERAL ASSEMBLY

SENATE OF PENNSYLVANIA

[104 PA. CODE CH. 7]

Right-to-Know Law

The Senate of Pennsylvania, under section 504(a) of the Right-to-Know Law (65 P. S. § 67.504(a)), adds Chapter 7 (relating to Right-to-Know Law) as set forth in Annex A.

Public Comments

Interested parties are invited to submit written comments, objections or suggestions about the statement of policy to the Secretary of the Senate, 462 Main Capitol Building, Harrisburg, PA 17120 within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile or e-mail will not be accepted.

MARK R. CORRIGAN,
Secretary of the Senate

(*Editor's Note:* Title 104 of the Pa. Code is amended by adding §§ 7.1, 7.11—7.15 and 7.21—7.23 to read as set forth in Annex A.)

Annex A

TITLE 104. SENATE OF PENNSYLVANIA

CHAPTER 7. RIGHT-TO-KNOW LAW—STATEMENTS OF POLICY

Subchapter A. PRELIMINARY PROVISIONS

Sec.

7.1. Definitions.

§ 7.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Appeals examiner—A person designated by the Secretary of the Senate to act on his behalf for appeals from determinations of the open-records officer.

Appeals officer—The Secretary of the Senate, 462 Main Capitol Building, Harrisburg, Pennsylvania 17120, under section 503(c)(2)(i) of the law (65 P. S. § 67.503(c)(2)(i)), for appeals from determinations of the open-records officer.

Bureau—The Legislative Reference Bureau.

Mass request—A number of requests under the law to which all of the following apply:

- (1) Each request is for the same Senatorial record.
- (2) The number greatly exceeds the average daily volume of requests and burdens the normal operations of the Office of the Chief Clerk.
- (3) The requests are substantially identical in format and language.
- (4) The open-records officer is able to trace the requests to a common source.

Office of Open Records—The office established in the Department of Community and Economic Development under section 1310 of the law (65 P. S. § 1310).

Open-records officer—The Chief Clerk of the Senate, 89 Capitol East Wing, Harrisburg, PA 17120, responsible for access to the information of the Senate of Pennsylvania under section 502(a)(2) of the law (65 P. S. § 67.502).

Law—The Right-to-Know Law (65 P. S. §§ 67.101—67.3104).

Requester—A person that makes a request for information from the Senate of Pennsylvania under the law.

Subchapter B. OPEN RECORDS PROCEDURES OF THE SENATE

Sec.

7.11. Hours of access.
7.12. Contact information.
7.13. Request format.
7.14. Mass requests.
7.15. Fee schedule.

§ 7.11. Hours of access.

The Right-to-Know Office of the Senate will be open from 9 a.m. to 4 p.m. Monday through Friday except for official State and Federal holidays and other days the office is closed by direction of the Chief Clerk of the Senate.

§ 7.12. Contact information.

Right-to-Know requests must be sent to:
Open-Records Officer
Office of the Senate Chief Clerk
89 Capitol East Wing
Harrisburg, PA 17120-3052
Fax: (717) 783-4296
Email: rtkofficer@occ.pasen.gov

§ 7.13. Request format.

Requests must be made in writing, must be clearly marked as a right-to-know request and must be submitted in person or by mail, email or facsimile in one of the following manners:

(1) On a form prescribed by the Chief Clerk.

(2) In a manner so that material requested describes records requested with specificity.

§ 7.14. Mass requests.

If the open-records officer determines that a mass request places an unreasonable burden on the Senate, in an analogous manner to that described in section 506(a)(1) of the law (65 P. S. § 67.506(a)(1)) for multiple requests by the same requester, the following apply:

(1) The open-records officer will respond to the common source identified by the open-records officer; respond to individual requests submitted in writing; and, if the request is granted, will make the legislative record accessible at the open-records office.

(2) If the mass request is in electronic format, each requester will be informed of the action under paragraph (1).

§ 7.15. Fee schedule.

(a) *General Rule.* Except as set forth in subsection (b), the following apply:

- (1) The fee for providing a document is \$.25 per image.
- (2) The fee for postage will not exceed actual mailing costs.
- (3) The fee for certifying a document is \$5 per document, regardless of the number of pages. Each document requires separate certification and fee.
- (4) The fee for redaction of a document is \$1 per page.
- (5) Additional fees may be imposed under section 1307(g) of the law (65 P.S. § 1307(g)) if the Senate necessarily incurs costs in complying with the request.

(b) *Exception.* If the Office of Open Records established under section 1310 of the law (65 P.S. § 1310) promulgates a fee of less than any amount set forth in subsection (a), the Senate will charge the fee charged by the Office of Open Records.

(c) Payment.

(1) Payment arrangements shall be made between the requester and the open-records officer.

(2) Under section 1307(h) of the law, if the total fee is estimated to exceed \$100, payment may be required prior to the initiation of providing the document. If prepayment is required, a check, certified check or money order shall be made payable to the "Senate of Pennsylvania" in the total amount of the fee.

Subchapter C. APPELLATE PROCEDURE

Sec.	
7.21.	Administrative Agency Law.
7.22.	Appeals examiner.
7.23.	Parties.

§ 7.21. Administrative Agency Law.

(a) *Authority.* This section constitutes the adoption of practice and procedure provisions under section 1309 of the law (65 P.S. § 67.1309).

(b) Adoption.

(1) Except as set forth in subsection (c), the provisions of 2 Pa.C.S. Chapter 5 Subchapter A and Chapter 7 Subchapter A (relating to Administrative Agency Law) apply to appeals under this subchapter.

(2) This subsection applies notwithstanding 2 Pa.C.S. § 501(a) (relating to practice and procedure).

(c) Exceptions.

(1) Testimony will be recorded. A transcript will only be produced if there is an appeal under section 1301(a) of the law (65 P.S. § 67.1301). This paragraph applies notwithstanding 2 Pa.C.S. § 504 (relating to hearing and record).

(2) The provisions of 2 Pa.C.S. § 508 (relating to notice to Department of Justice) do not apply.

§ 7.22. Appeals examiner.

(a) *Status.* Under section 503(c)(2)(i) of the law (65 P.S. § 67.503(c)(2)(i)), the following apply:

(1) Except as set forth in paragraph (2), the appeals officer may provide appeals examiners for all appeals to make final recommendations for adoption by the appeals officer.

(2) For an appeal from a denial by the open-records officer of a record in the custody of the appeals officer, the Bureau will provide an appeals officer under 101 Pa. Code Chapter 31 (relating to Right-to-Know Law).

(b) Requirements.

- (1) The appeals examiner must be an attorney at law.
- (2) The appeals examiner may be an employee of or an individual under contract with the Bureau or the Senate.

§ 7.23. Parties.**(a) Original.**

(1) Under section 1101(a)(1) of the law (65 P.S. § 67.1101(a)(1)), an appeal may be made by a requester with respect to any of the following:

- (i) A request denied under section 903 of the law (65 P.S. § 67.903).
- (ii) A request deemed denied under section 901 of the law (65 P.S. § 67.901).

(2) Under section 1101(c) of the law, a party with a direct interest in the information subject to the appeal may intervene in the appeal.

(b) Procedure.

(1) A party under subsection (a) must file two copies of the appeal or petition to intervene with the appeals officer. The copies must be in writing. Electronic filing is not permitted. For an appeal under subsection (a)(1)(i), the appeal or petition must refer to any disputed factual or legal matter in the denial under section 903 of the law.

(2) Upon receipt of the filing under paragraph (1), the appeals officer will send a copy to the open-records officer whose denial or deemed denial is being appealed.

(3) The appeals officer or appeals examiner may schedule an informal conference with the parties to attempt to resolve the matter or any factual disputes.

(c) *Submission on documents.* Except as set forth in subsection (d), the appeal will be resolved under section 1102(b)(1) of the law (65 P.S. § 67.1102(b)(1)), based on the following:

- (1) The appeal under section 1101(a)(1) of the law.
- (2) The denial under section 903 of the law.

(d) Hearing.

(1) A hearing may be held on an appeal only as follows:

- (i) The appeal is of a deemed denial under section 901 of the law.

(ii) The requester alleges willful misconduct under section 1304(a)(1) of the law (65 P.S. § 67.1304(a)(1)).

(iii) In the denial, the open-records officer rules that the request is frivolous under section 1304(b) of the law.

(iv) The appeals officer or appeals examiner determines that there is good cause for a hearing.

(2) Under section 1102(b)(2) of the law, a hearing is subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(e) *Determination.* Under section 1102(a)(4) of the law, the appeals officer will issue a final determination. The final determination will consist of the following:

- (1) *Title.* Identification of the requester.
- (2) *Procedural history.*
 - (i) A brief recital of the facts up to disposition by the open-records officer.
 - (ii) The disposition by the open-records officer. This subparagraph includes a denial under section 903 of the law and a deemed denial under section 901 of the law.
- (3) *Factual findings.* Resolution of disputed facts.
- (4) *Legal conclusions.* This includes cited authority.
- (5) *Order.* An order affirming the denial or granting the request, in whole or in part. An order under this paragraph is subject to judicial review under Chapter 13 of the law (65 P. S. §§ 67.1301—67.1310).

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