

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)), amends Chapter 7 (relating to Right-to-Know Law—statement of policy) to read as set forth in Annex A.

MEGAN MARTIN,
Secretary of the Senate

(Editor's Note: The statement of policy in 104 Pa. Code Chapter 7 is amended by adding §§ 7.13a and 7.16, deleting §§ 7.21—7.23 and amending §§ 7.1, 7.12, 7.13, 7.14 and 7.15 to read as set forth in Annex A. This statements of policy is effective upon publication in the Pennsylvania Bulletin.)

Annex A

TITLE 104. SENATE OF PENNSYLVANIA

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

Subchapter A. PRELIMINARY PROVISIONS

§ 7.1. Definitions.

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

Appeals Officer—The Secretary of the Senate, 462 Main Capitol Building, Harrisburg, Pennsylvania 17120, under section 503(c)(2)(i) of the RTKL (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 RTKL to which all of the following apply:

- (i) Each request is for the same Senatorial record.
- (ii) The number greatly exceeds the average daily volume of requests and burdens the normal operations of the Office of the Chief Clerk.
- (iii) The requests are substantially identical in format and language.
- (iv) 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 RTKL (65 P.S. § 67.1310).

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

RTKL—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 RTKL.

Subchapter B. OPEN RECORDS AND APPEAL PROCEDURES OF THE SENATE

§ 7.12. Contact information for Open Records Officer.

Right-to-Know requests shall be sent to:

Open Records Officer
Office of the Senate Chief Clerk
89 Capitol East Wing
Harrisburg, Pennsylvania 17120-3052
Fax: (717) 783-4296
Email: rtkofficer@occ.pasen.gov

§ 7.13. Requests—generally.

(a) *Submission of request.* A request should be made using the Senate “Right-to-Know Records Request Form” found on the Senate web site and be directed to the Open Records Officer. If the requester chooses not to use the request form, a written request should be submitted and clearly indicate that it is seeking records under the RTKL. To allow the Open Records Officer to determine whether the requested records are accessible under the RTKL and locate them, a request for records should be specific and concise, clearly identify as precisely as possible the records sought and include a calendar time period. A requester should retain a copy of the request for his files as a copy of the request is necessary if a requester appeals a response.

(b) *Receipt of the request.* The Senate is deemed to receive the request on the business day the Open Records Officer receives the request. A request that is received by the Open Records Officer after the close of regular business hours will be deemed to be received on the next business day. If the request is received by any other Senate employee, the request will be forwarded to the Open Records Officer as soon as practical.

(c) *Verbal and anonymous requests.* Verbal requests for records may be accepted and fulfilled. Anonymous requests, verbal or written, will not be accepted. Requesters submitting verbal requests for records may not pursue the remedies available to a requester under the RTKL.

§ 7.13a. Response.

(a) *Response period generally.* Upon receipt, the Open Records Officer has 5 business days to respond to the request for records under the RTKL. If a response is not sent within 5 business days, the request is considered “deemed denied” and a requester’s appeal rights begin.

(b) *Interim response.* The Open Records Officer is permitted to take an additional 30 calendar days to respond to any request for the reasons in section 902 of the RTKL (65 P.S. § 67.902). If an extension is applied, the Open Records Officer will inform the requester in writing within 5 business days.

(c) *Requester agreement to extend the response period.* The requester may agree, in writing, to extend the response period beyond 30 days.

(d) *Final response.* A request may be granted, partially granted and partially denied, or denied in its entirety. The final response will be in writing. Should a response fail to be issued within the applicable response period, the request is deemed denied.

(e) *Access to records.* A response granting a request for access to records may be done by:

(1) Granting access to inspect Senate records during regular Senate business hours.

(2) Sending copies of the records to the requester.

(3) Notifying the requester that the records are available on the Senate web site or other publicly accessible electronic means.

(f) *Denying or partially denying access to records.* A response denying a request for access in its entirety or partially denying a request for access to records through redaction or otherwise, will inform the requester of the denial or partial denial in writing. The response will inform the requester that the Senate does not possess the record or, if the information is exempt from public access, provide a citation to the relevant legal basis for withholding the requested information.

§ 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 RTKL (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) Additional fees may be imposed under section 1307(g) of the RTKL (65 P.S. § 67.1307(g)) if the Senate necessarily incurs costs in complying with the request.

(5) Payment is required prior to access to records being granted. Payment shall be by a check or money order made payable to the "Senate of Pennsylvania" in the total amount of the fees provided for in the response.

(b) *Exception.* If the Office of Open Records established under section 1310 of the RTKL (65 P.S. § 67.1310) promulgates a fee of less than any amount in subsection (a), the Senate will charge the fee charged by the Office of Open Records.

(c) *Pre-payment.* Under section 1307(h) of the RTKL, 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" for the total estimated amount of the fees.

§ 7.16. RTKL appeals.

(a) *Generally.* To challenge a denial, partial denial or deemed denial of a request for access to records by the Open Records Officer, the appeal shall be filed with the Senate Appeals Officer.

(b) *Appeals Officer.*

(1) The Senate has appointed the Secretary of the Senate to serve as Appeals Officer under section 503 of the RTKL (65 P.S. § 67.503). The Appeals Officer can be contacted as follows:

Senate Appeals Officer
462 Main Capitol Building
Harrisburg, Pennsylvania 17120-3053
Telephone: (717) 787-5920
RTKAppeals@os.pasen.gov

(2) For an appeal from a denial by the Open Records Officer of a record in the custody of the Appeals Officer, the Appeals Officer may recuse himself and the Bureau will provide an appeals officer under 101 Pa. Code Chapter 31 (relating to Right-to-Know Law).

(c) *Filing of appeal.* An appeal must include complete contact information, a copy of the original request and a copy of the response, if any.

(1) An appeal shall be filed, in writing, with the Appeals Officer within 15 business days of the mailing date of the denial or deemed denial.

(2) As provided for by section 1101(a)(1) of the RTKL (65 P.S. § 67.1101(a)(1)), an appeal must state the grounds upon which the requester asserts that the record is a legislative record, including a financial record, and must address any grounds stated in the denial.

(3) The Appeals Officer is required to make a final determination, in writing, within 30 days of receiving an appeal. Prior to making the final determination, the Appeals Officer may hold a hearing.

(d) *Parties.*

(1) Under section 1101(a)(1) of the RTKL, an appeal may be made by a requester with respect to any of the following:

(i) A request denied under section 903 of the RTKL (65 P.S. § 67.903).

(ii) A request deemed denied under section 901 of the RTKL (65 P.S. § 67.901).

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

(e) *Procedure.*

(1) Upon receipt of the filing under subsection (c), the Appeals Officer will send a copy to the Open Records Officer whose denial or deemed denial is being appealed.

(2) The Appeals Officer may schedule an informal conference with the parties to attempt to resolve the matter or any factual disputes.

(3) Except as set forth in subsection (f), the appeal will be resolved under section 1102(b)(1) of the RTKL (65 P.S. § 67.1102(b)(1)), based on the following:

(i) The appeal under section 1101(a)(1) of the RTKL.

(ii) The denial under section 903 of the RTKL.

(f) *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 RTKL.

(ii) The requester alleges willful misconduct under section 1304(a)(1) of the RTKL (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 RTKL.

(iv) The Appeals Officer determines that there is good cause for a hearing.

(2) Under section 1102(b)(2) of the RTKL, a hearing is subject to 1 Pa. Code Chapters 31, 33 and 35, Subchapters A—F and J.

(3) Hearings conducted under the RTKL will be done in the presence of a stenographer or court reporter under 1 Pa. Code § 35.131 (relating to recording of proceedings).

(4) Testimony will be recorded. A transcript will only be produced if there is an appeal under section 1301(a) of the RTKL (65 P.S. § 67.1301(a)).

(g) *Final determination.* Under section 1102(a)(4) of the RTKL, 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 RTKL and a deemed denial under section 901 of the RTKL.

(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 sections 1301—1310 of the RTKL (65 P.S. §§ 67.1301—67.1310).

Subchapter C. (Reserved)

§§ 7.21—7.23. (Reserved).

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