



DEPARTMENT OF THE AUDITOR GENERAL
COMMONWEALTH OF PENNSYLVANIA

ADMINISTRATIVE DIRECTIVE

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CHIEF OF STAFF

2019-01

Right-to-Know Policy
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PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

Administrative Directive establishing policies and procedures for processing requests for access to records under the new Right-to-Know Law.

I. Introduction

A. Purpose

This Administrative Directive establishes policies and procedures to allow for access by the public to records within the custody and control of the Pennsylvania Department of the Auditor General (“Department”) as required by the Right-to-Know Law, Act of February 14, 2008, P.L. 6, No. 3, 65 P.S. § 67.101 *et seq.* (“Law”).

B. Scope

This Administrative Directive shall apply to all offices and bureaus under the jurisdiction of the Department. Nothing in this directive shall be construed to modify, rescind, or supersede the Department’s records retention policy.

C. Policy

The Department and its employees shall comply with the requirements of the Law. The Department retains the right to establish and impose reasonable rules, including, but not limited to, this Administrative Directive, to effectuate the Department’s compliance with the Law.

II. Appointment of Open Records Officer and Appeals Officer

A. The Department’s Chief Counsel or his/her designee shall serve as the Department’s Open Records Officer.

1. The Open Records Officer shall receive and process requests for information submitted under the Law.
2. Department employees who receive requests for information under the Law shall forward the request to the Open Records Officer by the next business day.

B. The Department’s Deputy of Administration or his/her designee shall serve as the Department’s Appeals Officer.

1. The Appeals Officer shall hear appeals from persons who file written requests for information that had been denied under Section 903 of the Law or that had been deemed denied under Section 901 or 902 of the Law.
2. The determination of the Appeals Officer shall be the final determination of the Department.
3. The Open Records Officer shall be responsible for the recording and tracking of all incoming requests and shall keep a record of Department compliance with these requests under the Right to Know law.

III. Procedures for Processing Requests for Information

- A. A request for records under the Law shall be made in writing and signed by the requester. The Department will not accept verbal, telephone, anonymous, or unsigned requests. The Department's *Right-to-Know Law Request Form* is attached to this Administrative Directive. A uniform request form is also available from the Commonwealth's Office of Open Records (<http://openrecords.state.pa.us>). All requests shall be directed to the following office:

Open Records Officer
Department of the Auditor General
224 Finance Building
Harrisburg, Pennsylvania 17120-0018
Fax: (717) 772-1287 E-mail: RTKOfficer@PaAuditor.gov

- B. Written requests for records may be submitted to the Department by mail, fax, or e-mail above, or by delivery in person to the address above during the Department's regular business hours from 8:30 a.m. to 5:00 p.m., Monday through Friday (excluding Commonwealth holidays).
- C. Requests for information are not deemed received by the Department for purposes of the response period(s) under the Law until actually received and viewed by the Department Open Records Officer.
- D. The request should identify or describe the records sought with sufficient specificity to enable the Open Records Officer to ascertain which records are being requested. If the request does not contain sufficient information to identify the record sought, the Open Records Officer shall notify the requestor of the deficiencies in the request. The request shall not be considered received by the Department for purposes of the time periods established by the Law until the requestor provides the information necessary to identify the records sought.
- E. Upon receiving a request for a record, the Open Records Officer shall:
1. Stamp the date of receipt on the written request.

2. Compute the date on which the statutory five-day period under Section 901 of the Law will expire, make a notation of that date on the written request, and track the Department's progress in responding to the request.
3. Maintain an electronic or paper copy of the written request, including all correspondence issued and all documents submitted with the Department's reply.
4. Create a file for the retention of the original request, a copy of the Department's response, a record of any other written communications with the requestor, and a copy of any other communications related to the request.
5. Ascertain whether the record may be produced within the statutory five-day period or whether an extension of time is necessary under Section 902 of the Law.
6. Ascertain whether the request should be directed to other appropriate persons within or outside the Department, and/or whether a third party may have a direct interest in the record, and if so, forward as appropriate and/or notify the third party that a request for the record has been made.
7. Provide written notice to the requestor under Section 902 of the Law as necessary with regard to the anticipated extension of time needed to provide a response to the request.
8. Negotiate any additional extensions of time that may be desirable to efficiently and effectively respond to the request.
9. Direct other employees of the Department to provide the Open Records Officer all records that appear responsive to the request.
10. Review Department records that appear responsive to the request and determine whether the record is exempt from public access because of the application of a lawful privilege, an exception under the Law, or because disclosure is prohibited by state or federal law or court order.
11. Redact any non-releasable portion of a record where the remainder of the record otherwise may be released except for that portion being redacted.
12. Ascertain the estimated costs for the reproduction of the records. Notify the requestor of the estimated costs. A *Right-to-Know Law Request Fee Schedule* shall be established by the Open Records Officer, reviewed and revised as needed, and attached to this Administrative Directive.
13. Determine whether the request is disruptive or otherwise subject to denial under Section 506 of the Law.

14. Respond in writing to the request consistent with the time limits and other requirements of the Law. In the case of a denial of a record, either in whole or in part, the response shall include the information required under Section 903 of the Law.
15. Unless the requestor specifically seeks to examine or obtain access to an original document, the Department may (depending on the size and nature of the request) choose to meet its disclosure obligation by sending the requestor a copy of the information requested. Otherwise, any information determined to be a public record subject to the disclosure provisions of the Law shall be made available for public inspection and duplication during regular office hours. Prior to inspecting such documents, the requestor must furnish a representative from the Department with identification to ensure that the requesting party is the same individual that made the request or is a representative of the entity that made the request.
16. Maintain and track all communications and records related to the request throughout all stages of the process, from initial request through any appeals.

IV. Procedures to Appeal the Denial of Access to Records

- A. A person whose request for access to records has been denied in whole or in part may file an appeal of the denial. The appeal must be made in writing and must be filed within 15 business days of the mailing date of the denial or within 15 business days of a deemed denial. The appeal shall be directed to:

Open Records Appeal Officer
Department of the Auditor General
320 Finance Building
Harrisburg, Pennsylvania 17120-0018

- B. The appeal shall include all factual and legal arguments that the requestor is relying upon in support of the requestor's appeal and address any grounds asserted by the Open Records Officer in denying the request. Issues not raised by the requestor in the appeal shall be deemed waived. A copy of the original completed request form shall be submitted with the appeal.
- C. The Open Records Officer shall file a written reply to the requestor's appeal within 15 business days of receipt of the appeal. The reply shall include all factual and legal arguments in support of the position of the Open Records Officer.
- D. The requestor may file a further response within 7 business days of the date of mailing of the Open Records Officer's reply. No additional pleadings will be accepted.

- E. Except for good cause shown, no live testimony shall be received. In lieu of testimony, the parties may submit unsworn written statements to establish facts in support of their respective positions. A party who provides a false unsworn statement may be subject to penalties as provided by 18 Pa.C.S. § 4904 (pertaining to criminal penalties for providing unsworn false statements to authorities).
- F. The Appeals Officer may review records *in camera* in order to ascertain whether the denial of the record should be sustained or reversed.
- G. The Appeals Officer shall issue a written determination within 30 days of receipt of the appeal. This written determination shall be the final agency decision in the matter.
- H. The Open Records Officer shall comply with the decision of the Appeals Officer or, within 30 days of the date of the final agency decision, file a Petition for Review of the decision to Commonwealth Court.
- I. To the extent that the decision sustains the denial of the records request, the requestor may, within 30 days of the mailing date of the final agency decision, file a Petition for Review to the Commonwealth Court.

V. Creation of Records

The Department is not required to create a record that does not currently exist, or compile, maintain, format, or organize a record in a manner in which the Department does not currently compile, maintain, format, or organize its records. The Department shall establish, in consultation with the Open Records Officer, policies for the compilation, maintenance, and storage of Department records.

VI. Information Available Electronically or on the Department's Website

To the extent that the requested record is available either electronically or through the Department's website, the Open Records Officer may respond to the request by either directing the requestor how to access the record electronically or by directing the requestor to the webpage which contains the responsive information.

VII. Obligations of Department Personnel

All Department personnel are directed to cooperate fully with the Department's Open Records Officer and Appeals Officer with regard to the production of records in the employee's custody or control.

Records that are the subject of a current or pending Right to Know request must be retained by the Department, even if the applicable internal records retention and disposition schedule for such records indicates otherwise. These records may not be disposed of during the duration of the active request, the appeal period related to the request or during any subsequent appeal related to the request. The

Department's Open Records Officer should be consulted prior to the disposal or destruction of any records which are responsive to requests under the Right to Know law.

VIII. Effective Date

This Administrative Directive shall become effective on May 8, 2019.

IX. Distribution

This Administrative Directive shall be distributed to all employees and shall be made available to the public by publication on the Department's website and in writing upon request.

*Official Use Only –
Request Tracking Number*

*Official Use Only –
Date Stamp*

PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

**Open Records Officer
224 Finance Building
Harrisburg, Pennsylvania 17120-0018
Attn: Right-to-Know Law Request**

Right-to-Know Law Request Form

Name of Requester: _____
(Please Print) *Last* *First* *MI*

Signature: _____ Date: _____

Mailing Address: _____
Street/P.O. Box

City *State* *Zip Code*

Telephone Number: _____ Fax Number: _____
optional *optional*

Is the requester a legal resident of the United States of America? Yes _____ No _____
If "yes," provide the address of the resident, if different from the Mailing Address provided above:

Please identify each of the documents subject to this request. You must identify these documents with sufficient specificity so we may ascertain whether we have these documents and how to locate them. Use and attach additional sheets of paper if necessary.

Request submitted via (please check one of the following):

- U.S. Mail
- E-Mail
- Fax
- In-person delivery

I am requesting (please check one of the following):

- Access to the document(s) identified above.
- Copy of the document(s) identified above.
 Certified copy if available.
- Access to the document(s) identified above **and** a copy of the document(s).

PLEASE NOTE: RETAIN A COPY OF THE COMPLETED FORM FOR YOUR FILES.

IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL.

PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

Right-to-Know Law Request Fee Schedule

If a written request for records is granted, the following fees shall be charged to the requester:

Copies:

1-10 photocopies	No charge
11 + photocopies	\$.25 per copy
Certified photocopies	\$1.00 per copy

Computer Diskettes:

\$1.00 per diskette

Postage:

Records fitting into standard letter-sized envelope	No charge
Other types of mailing	Actual cost

A “photocopy” is either a single-sided copy or one side of a double-sided copy of a standard 8.5 x 11-inch page. If the cost of complying with the request is estimated to exceed \$100.00, or if the requestor previously has not submitted payment for prior requests, the requestor may be required to submit the costs in advance. All costs shall be paid by check or money order payable to the “Pennsylvania Department of the Auditor General.”