


**ADMINISTRATIVE POLICY  
OFFICE OF ATTORNEY GENERAL  
COMMONWEALTH OF PENNSYLVANIA**

<b>Subject:</b> Right-to-Know	<b>Date:</b> February 23, 2009
<b>By Direction Of:</b>  Thomas W. Corbett, Jr., Attorney General	

**PURPOSE**

To establish policy and procedures allowing access and release of documents as required by Act 3 of 2008 known as the Right-to-Know Law.

**Policy**

- I. General
  - A. General Rule: Unless otherwise provided by law, a public record shall be accessible for inspection and duplication by a requester in accordance with this Policy. A Public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for access during the regular business hours of the OAG. Nothing in this Policy shall provide for access to a record which is not a public record.
  - B. Presumption: A record in the possession of OAG shall be presumed to be a public record. The presumption shall not apply if: (1) the record is exempt under section 708 of the Act; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.
  - C. Written Requests: A written request for access to records may be submitted in person, by mail, by facsimile or email. A written request shall be addressed to the Chief Deputy Attorney General for Legal Review and sent to the following address:

Office of Attorney General  
Chief Deputy Attorney General for Legal Review  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

A written request should identify or describe the records sought with sufficient specificity to enable the OAG to ascertain which records are being requested and shall include the name and address to which the OAG should address its response. A written request need not include any explanation of the requester's reason for requesting or intended use of the records.

- D. **Electronic Access:** In addition to the requirements of Section I.A, the OAG may make its public records available through any publicly accessible electronic means. If access to a public record is routinely available from the OAG only by electronic means, the OAG shall provide access to inspect the public record at an office of the OAG. If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the OAG notification, submit a written request to the OAG to have the record converted to paper. The OAG shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper. Nothing in this Policy or the Act shall be construed to require access to any computer either of the OAG or individual employee of the OAG.
- E. **Creation of a Public Record:** When responding to a request to access, the OAG shall not be required to create a public record which does not currently exist or to compile, maintain, format or organize a public record in a manner in which the OAG does not currently compile, maintain, format or organize the public record.
- F. **Conversion of an Electronic Record to Paper:** If a public record is only maintained electronically or in other non-paper media, the OAG shall, upon request, duplicate the public record on paper when responding to a request for access in accordance with Act 3 of 2008.
- G. **Retention of Records:** Nothing in this Policy is intended to modify, rescind or supersede any record retention and disposition schedule established pursuant to law, regulation, policy or other directive.

## II. Definitions

The following words and phrases when used in this Policy shall have the meaning given to them in this Policy unless the context clearly indicates otherwise:

- A. **OAG:** The Office of Attorney General.
- B. **Public Record:** A record, including a financial record, of the OAG that: (1) is not exempt under section 708 of the Act; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.

- C. Record: Information, regardless of physical form or characteristics, that documents a transaction or activity of the OAG and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the OAG. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.
- D. Financial Record: Any of the following: (1) any account, voucher or contract dealing with the receipt or disbursement of funds by the OAG or the OAG's acquisition, use or disposal of services, supplies, materials, equipment or property; (2) the salary or other payments or expenses paid to an officer or employee of the OAG, including the name and title of the officer or employee; (3) a financial audit report, but the term does not include work papers underlying an audit.
- E. Requester: A person that is a legal resident of the United States and requests a record pursuant to this Policy.
- F. Response: Access to a record or the OAG's written notice to a requester granting, denying or partially granting and partially denying access to a record.

### III. Open Records Officer

- A. Establishment: The OAG designates the Chief Deputy Attorney General for Legal Review, or his designee, as the agency open-records officer.
- B. Functions: The open-records officer shall receive requests submitted to the OAG under this Policy, direct requests to other appropriate persons with the OAG or to appropriate persons in another agency, track the OAG's progress in responding to requests and issue interim and final responses under this Policy.
- C. Procedure: Upon receiving a request for a public record, the open-records officer shall: (1) note the date of receipt on the written request; (2) compute the day on which the five-day period under section 901 of the Act will expire and make a notation of that date on the written request; (3) maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled; if the request is denied, the written request shall be maintained for 30 days or, if an appeal is filed, until a final determination is issued under section 1101(b) of the Act or the appeal is deemed denied; (4) create a file for the retention of the original request, a copy of the response, a record of written communications with the requester and a copy of other communications.

- D. Each OAG Division Director shall designate a person responsible for cooperating with the Open Records Officer regarding requests for access that involve records in the possession of that division.

#### IV. Access to Public Records

The OAG shall not deny a requester access to a public record due to the intended use of the public record by the requester, unless otherwise provided by law.

#### V. Redaction

If the OAG determines that a public record contains information which is subject to access as well as information which is not subject to access, the OAG's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record and cannot be separated, the OAG shall redact from the public record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The OAG shall not deny access to the public record if the information which is not subject to access is able to be redacted. Information which the OAG redacts in accordance with this section shall be deemed a denial under Section VII of this Policy.

#### VI. Production of Certain Records

- A. General: If, in response to a request, the OAG produces a record that is not a public record or financial record, the OAG shall notify any third party that provided the record to the OAG, the person that is the subject of the record and the requester.
- B. Trade Secrets: The OAG shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five business days of receipt of the request for the record. The third party shall have five business days from receipt of notification from the OAG to provide input on the release of the record. The OAG shall deny the request for the record or release the record within ten business days of the provision of notice to the third party and shall notify the third party of the decision.

#### VII. Response to Written Request for Access

- A. General Rule: Upon receipt of a written request for access to a record, the OAG shall make a good faith effort to determine if the record requested is a public record or financial record and whether the OAG has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. The time for response shall not exceed five business days from the date the written request is received by the Chief Deputy Attorney General for Legal Review. If the OAG fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.
- B. Exception: Upon receipt of a written request for access, the OAG shall determine if one of the following applies:
1. the request for access requires redaction of a record in accordance with Section V this Policy;
  2. the request for access requires the retrieval of a record stored in a remote location;
  3. a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
  4. a legal review is necessary to determine whether the record is a record subject to access under Act 3 of 2008;
  5. the requester has not complied with the OAG's policies regarding access to records;
  6. the requester refuses to pay applicable fees authorized by Section XI of this Policy;
  7. the extent or nature of the request precludes a response within the required time period.

Upon a determination that one of the above-referenced factors applies, the OAG shall send written notice to the requester within five business days of receipt of the request for access. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date specified in the written notice is in excess of 30 days, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to that date. If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

- C. Denial: If the OAG's response is a denial of a written request for access, whether in whole or in part, a written response shall be issued and include:
1. A description of the record requested.
  2. The specific reasons for the denial, including a citation of supporting legal authority.
  3. The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.
  4. Date of the response.
  5. The procedure to appeal the denial of access under this Act.
- D. Disruptive Requests: The OAG may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the OAG. This denial shall not restrict the requester's ability to request a different record.
- E. Disaster or Potential Damage: The OAG may deny a requester access:
1. When timely access is not possible due to fire, flood or other disaster; or
  2. To historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.
- To the extent possible, the contents of such a record shall be made accessible to a requester even when the record is physically unavailable.
- F. Agency Discretion: The OAG may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this Policy, if all of the following apply:
1. Disclosure of the record is not prohibited under federal or state law or regulation, or judicial order or decree.
  2. The record is not protected by a privilege.

3. The Attorney General determines that the public interest favoring access outweighs any individual, OAG or public interest that may favor restriction of access.
- G. Agency Possession: A public record that is not in the possession of the OAG but is in the possession of a party with whom the OAG has contracted to perform a governmental function on its behalf, and which directly relates to the governmental function and is not exempt from disclosure, shall be considered a public record of the OAG. This shall not be construed to require access to any other record of the party in possession of the public record. A request for a public record in possession of a party other than the OAG shall be submitted to the Chief Deputy Attorney General for Legal Review. Upon a determination that the record is subject to access, the Chief Deputy shall assess the duplication fee established under Section XI of this Policy and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record. The Chief Deputy shall also be responsible for obtaining those records subject to access from the party and delivering them to the requester.
  - H. Certified Copies: If the OAG's response grants a request for access, the OAG shall, upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees pursuant to Section XI of this Policy.

#### VIII. Appeal of Open-Records Officer Determination

- A. Establishment: The Attorney General, at his discretion, shall designate a member of the Executive Office staff as the agency appeals officer.
- B. Filing of Exceptions: If a written request for access is denied or deemed denied, the requester may file an appeal with the Executive Office and send it to the following address:

Office of Attorney General  
Executive Office – Right-to-Know Appeals Officer  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

The appeal shall be filed within 15 business days of the mailing date of the OAG's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record or financial record and shall address any grounds stated by the OAG for delaying or denying the request.

- C. Burden of Proof: The burden of proving that a record of the OAG is exempt from public access shall be on the OAG by a preponderance of the evidence.
- D. Determination: Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the Open Records Officer within 30 days of receipt of the appeal filed under Section VIII.A of this Policy. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the Open Records Officer. Prior to issuing a final determine, a hearing may be conducted. If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied. The determination by the appeals officer shall be a final order.
- E. Direct Interest: A person other than the OAG or the requester with a direct interest in the record subject to an appeal under Section VIII.A of this Policy may, within 15 days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the requester's or OAG's position. The appeals officer may grant this request if no hearing has been held, the appeals officer has not yet issued his order and the appeals officer believes the information will be probative. Copies of the written request shall be sent to the requester and the Open Records Officer.

#### IX. Appeals Officers

- A. Duties: The appeals officer shall do all of the following:
  - 1. Set a schedule for the requester and the Open Records Officer to submit documents in support of their positions.
  - 2. Review all information filed relating to the request. The appeals officer may hold a hearing. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.
  - 3. Issue a final determination on behalf of the OAG.
- B. Procedures: The procedures contained within 1 Pa Code Pt. II (relating to General Rules of Administrative Practice and Procedure) shall apply to appeals taken under Section VIII of this Policy.

#### X. Judicial Review

- A. General Rule: Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of the OAG or the date a request for access is deemed denied, a requester or the OAG may file a petition for review or other document as might be required by rule of court with the Commonwealth Court.
- B. Stay: A petition for review under Section X.A of this Policy shall stay the release of documents until a decision by the Commonwealth Court is issued.
- C. Notice: The OAG, the requester and the appeals officer shall be served notice of actions commenced in accordance with Section X.A of this Policy and shall have an opportunity to respond in accordance with applicable court rules.
- D. Record on Appeal: The record before a court shall consist of the request, the OAG's response, the appeal filed under Section VIII.A of this Policy, the hearing transcript, if any, and the final written determination of the appeals officer.

## XI. Fees

The OAG has established a fee schedule (Attachment 1) for the duplication and delivery of a public or financial record using the following guidelines:

- A. Postage: Fees for postage may not exceed the actual cost of mailing.
- B. Duplication: Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile of other electronic means and other means of duplication are in Attachment 1.
- C. Complex and Extensive Data Sets: Fees for copying complex and extensive data sets, including geographic information systems or integrated property assessment lists, may be based on the reasonable market value of the same or closely related data sets.
  - 1. The foregoing shall not apply to a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly publication, press association or radio or television station, for the purpose of obtaining information for publication or broadcast or to a request by a nonprofit organization for the conduct of educational research. Information obtained in this manner shall be subject to Section XI.A and XI.B of this Policy.
- D. Certification: The OAG may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.

- E. Conversion to Paper: If a record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media as provided by Section XI.B of this Policy unless the requester specifically requests for the record to be duplicated in the more expensive medium.
- F. Enhanced Electronic Access: If the OAG offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by Act 3 of 2008, the OAG may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by Act 3 of 2008.
- G. Waiver of Fees: The OAG may waive the fees for duplication of a public record, including, but not limited to, when:
  - 1. the requester duplicates the public record; or
  - 2. The OAG deems it is in the public interest to do so.
- H. Limitations: Except as otherwise provided by statute, no other fees may be imposed unless the OAG necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for the OAG's review of a record to determine whether the record is a public or financial record subject to access in accordance with Act 3 of 2008.
- I. Prepayment: Prior to granting a request for access in accordance with Act 3 of 2008, the OAG may require a requester to prepay an estimate of the fees authorized under Section XI of this Policy if the fees required to fulfill the request are expected to exceed \$100.

## **ATTACHMENT 1**

### **RIGHT-TO-KNOW FEE SCHEDULE (Updated 12-15-10)**

POSTAGE – Postage will be charged at the actual cost of mailing.

DUPLICATION – The cost of duplication shall be 20 cents per page.

ELECTRONIC (CD) – The cost for transferring files to a CD will be \$5.00.