



pennsylvania

OFFICE OF OPEN RECORDS

STATEMENT OF POLICY

The Office of Open Records establishes the following Procedural Guidelines to govern the appeals procedure when a Commonwealth or Local Agency denies a request for records, pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, hereafter referred to as “the RTKL.”

I. DEFINITIONS

A. The following definitions shall apply to proceedings under the RTKL:

1. Definitions set forth in the RTKL are incorporated by reference.
2. “**Address**” – for the purposes of Section 703 of the RTKL only, the e-mail or postal location listed by a Requester to which an Agency must direct its Response.
3. “**Deemed denial**” – the failure of an agency to issue a timely Response to a Request pursuant to Section 901 or 902(b)(2) of the RTKL.
4. “**Deficient appeal**” – an appeal received by the OOR that does not include the information and/or documents required by the RTKL and/or Section IV, below.
5. “**Direct interest participant**” – a person or entity who has been granted the ability to participate before the OOR.
6. “**Executive Director**” – the Executive Director of the OOR.
7. “**Extension notice**” – written notice by an agency invoking an extension of time to respond to a Request pursuant to Section 902 of the RTKL.
8. “**Final Determination**” – the written decision of the OOR regarding the matters appealed. A Final Determination is a binding final order subject to judicial review and enforcement.

9. “***In camera inspection***” – a proceeding during which an Appeals officer reviews records claimed to be non-public and submitted by an Agency or a Direct interest participant.
10. “**OOR**” – the Office of Open Records.
11. “**Open-records officer**” – an Agency official, employee or contractor designated by an Agency pursuant to Section 502(a) of the RTKL.
12. “**Petition for Reconsideration**” – an application for a re-adjudication of an appeal based on the contents of the record before the OOR on appeal.
13. “**Respondent**” – an Agency or OOR alleged to be subject to the RTKL that either denied, partially denied or deemed denied a Request for records that is the subject of an appeal filed by a Requester.

II. **DESCRIPTION OF THE ORGANIZATION**

The OOR is established pursuant to Section 1310 of the RTKL to, among other tasks, provide information related to the implementation and enforcement of the RTKL, assign Appeals officers to review appeals of decisions by Commonwealth and local Agencies, and monitor cases appealed to the OOR. The mission of the OOR is to implement the Commonwealth’s RTKL, provide training and to serve as a resource for citizens and public officials. The official address is:

Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street – Plaza Level
Harrisburg, PA 17120-0225
Telephone: 717-346-9903
Facsimile: 717-425-5343
Email: openrecords@pa.gov

The business hours of the OOR shall be from 9:00 a.m. to 5:00 p.m. each weekday, except Saturdays, Sundays, legal holidays designated by 44 P.S. § 11 and emergency closings. Appeals filed by electronic mail or facsimile transmission will be accepted up to 11:59:59 p.m. and will be date-stamped as being received that business day.

III. **FILING OF RTKL REQUESTS**

A. **Notice to third parties**

1. Upon receipt of a Request for records, an Agency shall provide notice to third parties and an opportunity to raise objections to the release of the requested records where the Request:

- a. Seeks records that affect the legal or safety interests of Agency employees or third parties;
 - b. Seeks records designated as containing trade secrets or confidential proprietary information; or
 - c. Seeks records in the possession of a third party contractor of the Agency.
2. Notice shall be accomplished by providing:
 - a. A copy of the applicable Request; and
 - b. A statement notifying third parties that they may direct objections to the release of requested records to the Open-records officer prior to the deadline for an Agency response.
 - c. The Agency shall retain proof of service of notice via mail, e-mail, facsimile or hand delivery by the Open-records officer or his/her designee.
 3. If the Agency intends to provide the requested records to a Requester over the objections of a third party or parties, the Agency shall notify the third party or parties of:
 - a. The date which such records will be released; and
 - b. The ability to seek a court order to prevent the release of the requested records.

IV. COMMENCEMENT OF AN APPEAL

A. Appeal to the OOR

These Procedural Guidelines govern the form, filing and administration of appeals before the OOR. If the parties resolve the issues raised in an appeal at any time before a Final Determination is issued, which they are encouraged to do, they shall immediately inform the OOR in writing by withdrawing the appeal.

B. Form of Appeal

1. All appeals shall be in writing and include the following information that may be submitted using the Appeal Form found on <http://openrecords.pa.gov>:

- a. A copy of the Request filed with the Agency;
- b. A copy of the Agency's response, if any;
- c. A concise statement of the grounds that the Requester asserts that the record is a public record; and
- d. A concise statement addressing the grounds stated by the Agency for denying the Request.

C. Filing an Appeal

1. Deficient Appeals – An appeal that does not include the above-listed required documents under Section IV(B)(1)(a) and/or (b) is a Deficient appeal. Upon receipt of a Deficient Appeal, the OOR will assign a docket number to the appeal and issue an Order requiring the Requester to provide the missing documents required by Section IV(B)(1)(a) and/or (b) within seven (7) calendar days.
 - a. If the fifteen (15) business day appeal period has expired prior to the OOR's receipt of a Deficient Appeal, the Deficient Appeal will be dismissed without notice.
 - b. Appeals that do not include the above-listed required information under Section IV(B)(1)(c) and/or (d) (stating why the requested records are public records and/or a statement addressing the grounds for denial) will be dismissed without further notice. The OOR will liberally construe the requirements set forth in in Sections IV(B)(1)(c) and (d).
 - c. In the event an appeal is dismissed, a Requester may re-file the appeal unless the appeal period provided under Section 1101(a)(1) has elapsed. All required components and documents, including any submitted in the dismissed appeal, shall be re-filed with the OOR when an appeal is re-filed. The filing of a Deficient Appeal does not toll the fifteen (15) business day appeal period provided under Section 1101(a)(1), except as provided by Section IV(C)(1).
2. Docketing – The OOR shall maintain a docket of all proceedings and each proceeding shall be assigned a number. The docket shall be available for inspection and copying by the public under the RTKL insofar as consistent with the proper discharge of the duties of the OOR. An appeal shall be deemed to have been filed on the date it is received by the OOR (*see* Sections IV(C)(7) and (8), below). Appeals may be filed via United States mail or any other recognized mail delivery service, hand-delivery, facsimile, or electronically.

- a. Filings - May be submitted via postal, facsimile or hand delivery. Filings received outside of normal business hours shall be deemed received and date stamped on the next business day of the OOR. Filings submitted by electronic mail or facsimile transmission will be accepted up to 11:59:59 p.m. and will be date-stamped as being received that business day. **Appeals which are filed by hard copy (i.e., by mail) MUST be submitted on 8 ½ x 11 or 8 ½ x 14 inch paper. Failure to submit hard copy appeals on 8 ½ x 11 or 8 ½ x 14 inch paper will result in the appeal being DISMISSED unless the party filing the document specifically seeks and is granted permission to file non-conforming papers. Any other hard copy document filed in an appeal should be filed on 8 ½ x 11 or 8 ½ x 14 inch paper to the extent possible.**
 - b. Electronic filings – May be submitted in Microsoft Word or Adobe PDF to openrecords@pa.gov or to other e-mail addresses designated by the OOR’s Official Notice of Appeal. Electronic filings received will be accepted up to 11:59:59 p.m. and will be date-stamped as being received that business day.
3. Number of Copies – Parties shall provide one (1) copy of all paper filings to the OOR, except as otherwise specified.
 4. Timely Filing Required – An appeal pursuant to the RTKL must be filed with the OOR within the earliest of:
 - a. Fifteen (15) business days of the mailing date of the Agency’s Response; or
 - b. Fifteen (15) business days of the Agency’s deemed denial of a request.

Appeals received after the statutory deadline will be dismissed. The OOR will accept appeals filed by electronic mail or facsimile transmission up to 11:59:59 p.m. and will date-stamp the appeal as being received that business day.

- i. Prison Mailbox Rule - If a Requester is incarcerated, the OOR will consider appeal submissions timely filed with evidence that the appeal was placed into the institutional mail within the fifteen (15) business day appeal period provided under Section 1101(a)(1) of the RTKL.

5. Computation of Time – Except as otherwise provided by law, computation of time shall begin as follows:
 - a. For an Extension notice or Response to a Request under Sections 901 and 902 of the RTKL, on the first business day after the date the written Request is received by the Open-records officer of the Agency;
 - b. For purposes of filing an appeal under Section 1101 of the RTKL, on the first business day after the mailing date of the Agency’s Response or a Deemed denial, whichever is earliest;
 - i. Prior to filing an appeal, a Requester will allow three (3) mailing days for receipt of the Agency’s Response or Extension notice. Failure to allow three (3) mailing days prior to filing an appeal will result in the appeal being dismissed as premature.
 - ii. If an Agency’s Response or Extension notice is untimely (beyond the five (5) business day deadline), the Request is deemed denied and the appeal must be filed within fifteen (15) business days of the date the Request is deemed denied and not the date of the Agency’s Response.
 - c. For the issuance of a Final Determination of the OOR as required in Section 1101, on the first day after the receipt of the appeal by the OOR; or
 - d. For the filing of a Petition for Review of a Final Determination issued by the OOR under Section 1301 of the RTKL, on the “Issued and Mailed” date set forth on the final page of the Final Determination.

Once the first day has been determined, count each business day or each calendar day depending on which is specified in the applicable section of the RTKL. If unspecified, count by calendar days. The computation of time includes the last day in the calculation. However, if the last day falls on a weekend or holiday, it shall not be counted and the period shall run to the next business day.

6. Mailbox Rule – For the purposes of determining a “mailing date” under the RTKL, the OOR follows the “mailbox rule” as adopted by the Pennsylvania courts. The OOR presumes that a letter from an Agency was in fact properly mailed *and* timely received. The communication at issue must be dated on its face. If it is, the OOR presumes that the letter was properly addressed, deposited in the post office, had prepaid postage

affixed and that it reached its destination in due course. Whether a *particular* letter was actually mailed, however, is a purely factual determination. Evidence that a letter has been mailed in the ordinary course of Agency business will be sufficient to permit the OOR to find that the letter was in fact received by the party to whom it was addressed. To rebut such mailed-in-the-ordinary-course evidence, it is not sufficient merely to deny receipt.

D. No Tolling

Except as provided by Section IV(C)(1), there will be no tolling of the deadlines in these Procedural Guidelines based upon the receipt of an inquiry or incomplete filing. If a Requester makes a preliminary inquiry, sends only part of the required material for an appeal, or sends it piecemeal, the appeal will not be preserved as of the first date of contact with the OOR. All required material must be received within the fifteen (15) business day statutory deadline to be docketed as an appeal.

E. Entry of Appearance

Parties to an appeal are not required to have counsel but, if they so choose, may be represented by an attorney admitted to practice before the Supreme Court of Pennsylvania. Attorneys shall adhere to the requirements of 1 Pa. Code. §§ 31.24, *et seq.*

V. PROCEDURE FOR ADMINISTERING APPEALS

A. The following procedure shall occur upon receipt of an appeal:

1. All appeals will be assigned a docket number and an Appeals officer shall be designated.
2. The OOR will determine whether or not the appeal includes the required documents and information or if it is deficient.
3. Deficient appeals will be handled as set forth in Section IV(C).
4. Unless the appeal is dismissed as deficient or the OOR does not have jurisdiction over the Agency, the OOR shall notify the parties in writing of the appeal. The notice of appeal shall provide the docket number, the deadline for submitting additional information for the record and contact information for the Appeals officer assigned.

B. Additional Information

The OOR may at any time request additional information from the Requester, Respondent and/or Direct interest participants, if any, and will provide an appropriate deadline for submitting additional information.

C. Notice to Third Parties

1. In the event records requested affect the legal or security interest of an employee of an Agency; contain or constitute proprietary, confidential or trademarked records of a third party; or are held by a third party contractor or vendor, the Agency shall notify such parties of the appeal before the OOR and advise them of their ability to participate pursuant to 65 P.S. § 67.1101(c).
2. Notice shall be accomplished within seven (7) business days by providing the entire contents of the appeal as provided by the OOR, with notice that third parties may participate before the OOR pursuant to 65 P.S. § 67.1101(c); and
3. The Agency must provide proof of such notice to the OOR within seven (7) business days of notice.

D. Role of the Appeals Officer

Upon assignment of an appeal, the Appeals officer's responsibilities include the following:

1. Review all information related to the Request;
2. Establish a schedule for the parties, and, if applicable, Direct interest participant, to submit evidence and legal argument in support of their positions if additional documentation is necessary;
3. In the discretion of the Appeals officer, the deadline for submissions may be extended;
4. Consult with Chief Counsel and the Executive Director as appropriate;
5. Review all relevant advisory opinions, Final Determinations and judicial decisions;
6. Act upon requests from third parties seeking to participate as a Direct interest participant;

- a. The Appeals officer may grant such a request from a third party if the following conditions are met:
 - i. A written request is received by the OOR that explains the direct interest and any reasons this interest is not adequately represented by the actual parties to the appeal;
 - ii. The Appeals officer has not yet held a hearing;
 - iii. A Final Determination has not been issued; and
 - iv. The Appeals officer believes the information will be probative.
 - b. The Appeals officer shall provide copies of any written request from a person with direct interest to the Requester and Respondent, as well as any documents thereafter submitted by a Direct interest participant prior to ruling on the request.
 - c. If a request is granted to participate in the appeal, the Direct interest participant shall serve copies of anything submitted to the OOR upon all parties and other Direct interest participants.
 - d. When a hearing is held, 1 Pa. Code Pt. II shall apply and Direct interest participants shall be subject to rules applicable to intervention, 1 Pa. Code §§ 35.27, *et seq.*
7. The Appeals officer shall recommend mediation where appropriate in his/her sole discretion to resolve the matter and offer it as an option to the parties where appropriate in his/her discretion. Mediation may only take place if both parties agree and when the Requester agrees to an appropriate extension of time to resolve the mediation;
 8. The Appeals officer may decide to hold a hearing but must consult with the Executive Director and Chief Counsel prior to making his/her decision;
 9. The decision of whether to hold a hearing is not subject to appeal. *See* 65 P.S. § 67.1102(a)(2);
 10. In the absence of a regulation, policy or procedure expressly governing appeals as set forth in the RTKL or by the OOR, the Appeals officer shall rule on procedural matters on the basis of justice, fairness and expeditious resolution of the dispute;

11. Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the OOR upon its own motion, shall issue only upon application in writing to the Appeals officer, except that during a hearing such application may be made orally on the record before the Appeals officer, who is hereby given authority to determine the relevancy and materiality of the evidence sought and to issue such subpoenas accordingly. Appeals officers and parties shall adhere to the rules for issuance, service and witness fees as set forth in General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.142 as adopted in these Procedural Guidelines;
12. The Appeals officer shall issue a Final Determination and send it to the Requester, Respondent and Direct interest participant, if any, within thirty (30) calendar days of docketing the appeal unless the Requester has agreed to allow the OOR additional time to issue the Final Determination. The Final Determination shall include:
 - a. The docket number of the appeal;
 - b. The name of the Appeals officer;
 - c. The name of the parties;
 - d. A factual summary of proceedings before the OOR;
 - e. A written explanation of the reason(s) for the Appeal officer's findings and conclusions; and
 - f. The date of issuance and mailing to the parties.
13. Where the parties and Direct interest participants have provided e-mail addresses, the OOR may send the Final Determination via e-mail and use delivery receipt, which shall be printed out and maintained in the appeal file. This will satisfy the requirements of Section 1101(b)(1) and no hard copy will be mailed;
14. If the Appeals officer fails to issue a Final Determination within thirty (30) calendar days, the appeal is deemed denied unless an extension of time has been agreed to by the Requester.
15. Upon mailing the Final Determination to the parties, the matter is concluded at the OOR and the Appeals officer shall include the Final Determination in the official file;
16. In the event of a typographical error which does not substantively impact the outcome of the appeal, the Appeals officer, in his/her discretion, may

issue an Amended Final Determination, along with correspondence indicating the revision(s);

- a. The issuance of an Amended Final Determination will not alter the deadline for judicial appeal set forth in the issuance of the original Final Determination.

17. The Appeals officer is subject to the authority of the Executive Director as set forth in Section 1310.

E. *In camera* inspection of record(s)

1. Unless prohibited by Federal or State statute, the Appeals officer may order an *in camera* inspection of the record(s) sought on appeal or upon the motion of the Requester, Agency or Direct interest participant, or on remand by a court. A decision by an Appeals officer to conduct *in camera* inspection shall not be subject to appeal.
2. Where an Appeals officer determines *in camera* review is necessary, an extension of time to issue a Final Determination shall be sought from the Requester. An Order shall follow directing the Agency or Direct interest participant to submit the records in accordance with the requirements listed in Section V(E) of these Procedural Guidelines.
3. The Agency or, if applicable, the Direct interest participant shall submit a copy of the records together with an *in camera* inspection index by the date ordered referencing each record, and each item within each record, claimed to be an exempt record citing the applicable exemption(s).
 - a. The *in camera* inspection index and records submitted for *in camera* review must be provided to the OOR by one of the following methods: regular mail, certified mail, e-mail or hand-delivery. If records are submitted for *in camera* review via e-mail, a hard copy or CD must also be provided within the deadline provided by the Appeals officer. The OOR may also permit agencies or direct interest participants to provide records for *in camera* review through other electronic means at the OOR's sole discretion.
 - b. If only one record is at issue, an index shall not be required.
4. If the records total 100 pages or more, they shall be submitted in Adobe PDF format on a computer/compact disc or similar electronic medium.
5. Each individual record shall be Bates numbered consecutively and correspond to the numbers as listed on the index.

6. In the event that a party providing records for *in camera* inspection fails to comply with the requirements of Section E of these Procedural Guidelines, the OOR may return the records, decline to inspect them or otherwise act upon the request for *in camera* inspection on the basis of justice, fairness and the expeditious resolution of the appeal.
7. The Appeals officer will verify that the Agency or, if applicable, the Direct interest participant has prepared and filed an *in camera* inspection index on which each record submitted for *in camera* inspection has been identified and numbered.
8. The Agency or, if applicable, the Direct interest participant shall provide a copy of the *in camera* inspection index to all parties to the appeal.
9. The Agency or, if applicable, the Direct interest participant shall file with the OOR three copies of the *in camera* inspection index. The Appeals officer will provide one copy to the Agency, or, if applicable, the Direct interest participant, as a receipt, indicating the records and date received. The receipt shall also certify that neither the records submitted for an *in camera* inspection, nor their contents, be disclosed to any unauthorized person, except as provided by court order or this section. The Appeals officer shall retain the second copy for both inventory and decision making purposes. The OOR shall retain the third copy as part of the non-public file of the appeal.
10. The Agency or, if applicable, the Direct interest participant shall certify that the records submitted for an *in camera* inspection are true and correct and complete copies of the records at issue in the appeal. If a hearing is held, the Agency, or, if applicable, the Direct interest participant, shall make available for direct and cross-examination the official who issued the certification.
11. The Appeals officer will store records submitted for an *in camera* inspection in a secure OOR file. Only the Appeals officer, the Executive Director, Deputy Director and staff attorneys are authorized to inspect these records.
12. The Appeals officer may print copies of the records for review and immediately destroy and discard any such copies after the need for review has passed. Any records printed shall be secured in the same manner as records submitted to the OOR in a non-electronic, i.e., .pdf format. The OOR will not otherwise allow records submitted for an *in camera* inspection to be copied. Likewise, any person authorized to inspect such records, with the exception of the assigned Appeals officer, may not take notes referring to specific information contained in those records.

References to specific records submitted for *in camera* inspection, or the contents of such records, in the Final Determination will be by the assigned reference numbers as endorsed on the records themselves or by reference to generic descriptions or characterizations as set forth in the *in camera* inspection index. Notes, if any, taken by the appeals officer will be immediately discarded upon the issuance of a Final Determination.

13. References to specific records submitted for *in camera* inspection, or the contents of such records, in the Final Determination will be by the assigned reference numbers as endorsed on the records themselves or by reference to generic descriptions or characterizations as set forth in the *in camera* inspection index or, if the *in camera* inspection index provides an insufficient description of the records, a generic description or characterization of the *in camera* records themselves..
14. At public hearings, the Appeals officer will not allow any mention of the specific contents of records submitted for an *in camera* inspection. Identification of these records may be made by reference to the assigned numbers endorsed on the records or by reference to generic descriptions or characterizations as set forth in the *in camera* inspection index or in other public records.
15. Unless a Final Determination is appealed to a reviewing court, after forty-five (45) calendar days from the issuance of the Final Determination, the OOR shall notify the Agency, or, if applicable, the Direct interest participant, to make appropriate arrangements for the return of all records submitted for an *in camera* inspection. The official taking possession of the exempt records on behalf of the Agency shall be required to sign a receipt for the records returned. If the Agency, or, if applicable, the Direct interest participant, fails to make arrangements for the return of exempt records, the OOR shall adhere to the expiration of time periods for the retention of evidence in the OOR's current schedule for the retention and destruction of records. In accordance with Section 524 of the Administrative Code of 1929 (71 P.S. § 204, relating to disposition of useless records), the OOR will dispose of the records.
16. Unless directed by court order, if a Final Determination is appealed to a reviewing court, the OOR will not include the records submitted for *in camera* inspection as part of the official record to be certified to the court. For cases appealed to the Commonwealth Court, the OOR will file the *in camera* records with the Court, under seal, in a separate Supplemental Certified Record.
17. Until delivery of the certified record to the court, the OOR will continue to retain records submitted for an *in camera* inspection in the OOR's secure file, separate and apart, from the remainder of the record on appeal.

18. If a court finds the records submitted for an *in camera* inspection to be non-public or exempt records, the OOR will retain those records in the OOR's secure file. The OOR shall notify the Agency, or, if applicable, the Direct interest participant, to make appropriate arrangements for the return of such records. The official taking possession of the records on behalf of the Agency shall be required to sign a receipt for the records returned. If the Agency, or, if applicable, the Direct interest participant, fails to make arrangements for the return of the records, the OOR shall adhere to the expiration of time periods for the retention of evidence in the OOR's current schedule for the retention and destruction of records. In accordance with Section 524 of the Administrative Code of 1929 (71 P.S. § 204, relating to disposition of useless records), the OOR will dispose of the records.

VI. PROCEDURE FOR HEARING APPEALS

If the Appeals officer, after consultation with the Executive Director, elects to hold a hearing, the following procedures shall be followed:

A. Calendar, Notice and Location of Hearings

1. The OOR shall maintain a hearing calendar of all proceedings set for a hearing and shall post the calendar on its website. The OOR, in its discretion with or without motion, for cause may at any time, with due notice to the parties, advance or postpone any proceeding on the hearing calendar.
2. In the absence of cause requiring otherwise, a description of the subjects and issues associated with all proceedings set for hearing shall be included in the calendar.
3. Notice fixing the time and place for the hearing shall be published in the *Pennsylvania Bulletin* prior to the date fixed in the notice unless the OOR finds that a shorter period of notice is reasonable and consistent with the public interest. *See* 1 Pa.Code § 35.105(c).
4. Notice scheduling a hearing shall set forth the authority and jurisdiction under which the hearing is to be held, the nature of the proceeding and shall specify the final date for the filing of petitions and notices to intervene.
5. Copies of the above-described notice shall be sent to the parties.
6. The Appeals officer may schedule the hearing to occur at any location in accordance with Section 1310 of the RTKL including, but not limited to:

- a. The OOR;
 - b. The office of counsel for the Agency if counsel has entered an appearance in the matter;
 - c. The office of Requester's counsel if counsel has entered an appearance in the matter;
 - d. By video conference if accessible to all parties (in this event, the address of all locations where the hearing may be viewed will appear on the OOR publication notice); or
 - i. If a hearing will be conducted by video-conferencing, the Appeals officer shall arrange for the submission of any documentary evidence prior to the hearing and distribute copies of any such materials to the parties and, if applicable, any Direct interest participant(s).
 - e. A location mutually agreed upon by the parties.
7. Appeals officers shall give due regard to the convenience and necessity of the parties and their attorneys in scheduling hearings so far as time, the proper execution of the functions of the OOR, and compliance with the deadline for a Final Determination under the RTKL permits. Extensions of time shall not be granted if the OOR shall be precluded from meeting the deadlines in the RTKL or an agreed-upon extension by the Requester.
8. Requests for extensions of time for issuing a Final Determination shall not be unreasonably withheld by the Requester.

B. Pre-hearing Conference

1. In order to provide an opportunity for the submission and consideration of facts, arguments, settlement proposals, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings before the Appeals officer as time, the nature of the proceeding, and the public interest may permit.
2. During a pre-hearing conference, the following may be considered:
 - a. Simplification and limitation of the issues;

- b. Exchange and acceptance of service of exhibits proposed to be offered in evidence;
- c. Obtaining of admission to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing;
- d. Limitation of the number of witnesses;
- e. Discovery or production of data; and
- f. Other matters as may be properly dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

C. Depositions

Appeals officers and parties shall adhere to the rules set forth in the General Rules of Administrative Practice and Procedure (“GRAPP”), 1 Pa. Code §§ 35.145 through 35.152. No deposition may be taken except upon approval of the Appeals officer.

VII. PROCEDURE FOR CONDUCTING HEARINGS

A. General Provisions

These rules are adopted to the extent not inconsistent with OOR policies, regulations and procedures and apply to hearings before Appeals officers pursuant to the RTKL. GRAPP shall be construed liberally to secure a just, speedy and inexpensive determination of the issues presented.

- 1. The provisions of GRAPP, 1 Pa. Code Part II, are incorporated by reference for any case that proceeds to a hearing in accordance with the RTKL with the exception of Subchapter G on Proposed Reports, Subchapter H on Agency Action, and Subchapter I on Reopening and Rehearing, which sections shall not apply.
- 2. All hearings conducted pursuant to the RTKL shall be done in the presence of a stenographer or court reporter pursuant to 1 Pa. Code §§ 35.131-.133.

B. Purpose of Hearing

The purpose of the hearing shall be to provide parties an opportunity to present evidence and argument, if permitted by the Appeals officer, on issues to be considered by the Appeals officer.

C. Authority Delegated to Appeals Officers

Appeals officers designated by the Executive Director to preside at hearings shall have authority as follows:

1. To regulate the course of hearings, including the scheduling thereof, subject to the approval of the Executive Director, and the recessing, reconvening, and the adjournment thereof, as provided in 1 Pa. Code § 35.102(b);
2. To administer oaths and affirmations;
3. To issue subpoenas;
4. To rule upon offers of proof and receive evidence;
5. To take or cause depositions to be taken;
6. To hold appropriate conferences before or during hearings;
7. To dispose of procedural matters and motions made during hearings; and
8. To take other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the OOR functions and the regulations and policies of the OOR.

D. Order of Presentation

The Agency shall open the hearing and present any evidence and witnesses in accordance with GRAPP, followed by the Requester who may also present evidence and witnesses. All witnesses shall be sworn in. Cross examination may be conducted as the Appeals officer shall find to be required for a full and true disclosure of the facts. The Appeals officer shall decide whether or not to hear closing arguments and, if so permitted, the Requester shall go first, followed by Respondent, which has the burden of proof pursuant to the RTKL.

1. If a Direct interest participant is involved, that participant may present evidence and witnesses after the Agency, and before the Requester.

E. Limiting Number of Witnesses

The Appeals officer, in his/her discretion, may limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing.

F. Written Testimony

The Appeals officer may permit any party to offer testimony in written form. Such written testimony shall be received in evidence with the same force and effect as though it were stated orally by the witness who has given the evidence, provided that each such witness shall be present at the hearing at which testimony is offered, shall adopt the written testimony under oath, and shall be made available for cross examination as directed by the Appeals officer. Prior to its admission such written testimony shall be subject to objections by parties.

G. Stipulations

Appeals officers and parties shall adhere to the rules set forth in GRAPP, 1 Pa. Code § 35.155.

H. Evidence

Appeals officers and parties shall adhere to the rules set forth in GRAPP, 1 Pa. Code §§ 35.161 through 35.169.

I. Hearing Transcript

Testimony shall be recorded on tape and by a duly qualified court reporter.

J. Procedure Following Hearing

At the conclusion of the hearing, the Appeals Officer will arrange for copies of the hearing transcript to be delivered to the parties and will establish a briefing schedule for the parties to submit briefs and reply briefs. At the conclusion of the briefing schedule, the Appeals Officer will certify the record of the proceedings. Thereafter, a Final Determination will be issued within the time frame set by the Requester.

VIII. PETITIONS FOR RECONSIDERATION

- A. The OOR will accept Petitions for Reconsideration of its Final Determinations. Such an application must be filed within fifteen (15) calendar days after the issuance of a Final Determination. The application must be made by petition, stating specifically the grounds relied upon.
- B. With respect to Petitions of Reconsideration, the OOR will follow the procedures set forth in GRAPP, 1 Pa. Code § 35.241.
- C. If the OOR grants a Petition for Reconsideration, the Respondent to the petition may file a response in the nature of an answer within fifteen (15) calendar days of the issuance of the order granting reconsideration.

- D. The OOR will issue a Final Determination upon Reconsideration within thirty (30) calendar days of the deadline for the Respondent's response.
- E. The OOR may deny a Petition for Reconsideration in writing. Otherwise, a Petition for Reconsideration will be deemed denied if no response is made within thirty (30) calendar days after it is filed.
- F. The filing of a Petition for Reconsideration shall not toll the time period for seeking judicial review under 65 P.S. §§ 67.1301-.1302.

IX. EFFECT OF FINAL DETERMINATION WHEN NO APPEAL IS FILED

Where an appeal from the Final Determination is not filed in accordance with Section X below, the following shall apply:

- A. In a case where the Appeals officer has issued a Final Determination ordering the release of records to a Requester and the Respondent/Agency does not appeal the Final Determination, records shall be made available on the 30th calendar day, or earlier if no appeal is to be filed, of the mailing date of the Final Determination.
- B. Failure to provide access in accordance with a Final Determination may subject an Agency to sanctions and penalties by a court.

X. JUDICIAL REVIEW OF THE FINAL DETERMINATION

K. Issuance and Service

As set forth above in these Procedural Guidelines, an Appeals officer shall issue a Final Determination within thirty (30) calendar days of commencement of the appeal to the OOR and mail it to all parties, unless the Requester has agreed to an extension of time beyond thirty (30) calendar days.

L. Finality

The Final Determination is a final order subject to judicial review.

M. Required Notice and Service

Notice of appeals to reviewing courts commenced in accordance with Section 1301 or 1302 of the RTKL shall be served on all parties and the OOR, which shall have an opportunity to respond in accordance with applicable court rules. The OOR shall also be served with notice of any subsequent appeal to an appellate court.

N. Record on Appeal

The record shall consist of the Request, the Agency's Response, the appeal filed with the OOR under Section 1101 of the RTKL, any information or evidence submitted to the OOR, the hearing transcript, if any, and the Final Determination. Records reviewed by the Appeals officer *in camera* shall not be part of the record in accordance with the Procedures set forth above in Section IV(E).

O. Judicial Review of the Final Determination for Commonwealth Agencies:

1. Within thirty (30) calendar days of the mailing date of the Final Determination of the Appeals officer relating to a decision by a Commonwealth Agency or the date an appeal is deemed denied, a Requester or the Agency may file a petition for review or other document as might be required by rule of court with the Commonwealth Court. The RTKL requires the Court decision to contain findings of fact and conclusions of law based upon the evidence as a whole.
2. Stay. A petition for review under this section shall stay the release of the documents until a decision or order of court is issued.

P. Judicial Review of the Final Determination for Local Agencies

1. Within thirty (30) calendar days of the mailing date of the Final Determination of the Appeals officer relating to a decision by a Local Agency or the date an appeal is deemed denied, a Requester or the Agency may file a petition for review or other document as might be required by rule of court with the Court of Common Pleas for the County in which the Local Agency is located. The RTKL requires the Court decision to contain findings of fact and conclusions of law based upon the evidence as a whole.
2. Stay. A petition for review under this section shall stay the release of the documents until a decision or order of court is issued.