



The Right-To-Know Law Act 3 of 2008

A Guide for Commonwealth Agencies

The Right-To-Know Law was signed on February 14, 2008 fundamentally changing the way people access public records of their government, and the way government processes those requests. The new law created the Office of Open Records to help implement and enforce Act 3 of 2008. A significant role of the Office of Open Records is to provide guidance to Commonwealth Agencies to prepare for the new law, which fully takes effect January 1, 2009. The Office of Open Records recommends that Commonwealth Agencies, at a minimum, perform the following eight key tasks prior to January 1, 2009:

1. Appoint a Right-To-Know Officer

The law requires that each Commonwealth Agency appoint a Right-to-Know Officer ("RTK Officer"). The RTK Officer has four tasks required by law:

- Receive requests submitted to the agency
- Direct requests to other appropriate persons within the agency or to appropriate persons in another agency
- Track the agency's progress in responding to requests
- Issue interim and final responses under this act

The Office of Open Records recommends that the RTK Officer be a senior level staff member so that he or she can quickly assess the request, understand the implications of the request, and identify the person or persons who may be in possession of Agency records. Many of you have asked whether this task should fall to a press secretary. OOR does not believe that is the best choice for this position, although it is critical that a RTK Officer keep the Agency press secretary and other senior staff aware of all incoming requests. In most instances press secretaries already have a full plate handling other deadline-oriented requests from media. An Agency RTK Officer must have the time to manage these requests in a timely fashion and to locate, review and if permitted by law to redact portions of the record prior to release. A press secretary must be able to

present a message for the Agency and may be in a position of having to defend a legitimate denial of records for the agency – but should not necessarily be put in the position of having to defend his or her own decision about denying a record.

2. Conduct Records Management Analysis

The single most critical piece of advice OOR can offer to Commonwealth Agencies is to undertake a Records Management analysis prior to January 1, 2009. This should include conducting an assessment of the types of records that your Agency possesses. Having a working knowledge of the documents, or types of documents, that your Agency possesses will increase your ability to quickly and efficiently respond to any RTK request and to determine whether the record exists. Your Agency may wish to identify a team of two-or-three people to do this. IT Departments are also very helpful resources in identifying and grouping records.

The RTK Officer should consult with the Pennsylvania Historical Management Commission to determine the applicable retention laws that govern your Agency. The Agency should work closely with its legal department to prepare documents necessary to be in compliance with this law, such as obtaining the schedule that governs and permits the discarding of records. If the law requires a Commonwealth Agency to retain records for certain number of years, the Agency should be diligent about maintaining that schedule. **DO NOT WAIT UNTIL DECEMBER TO CREATE A RECORDS MANAGEMENT POLICY;** it will create the misimpression that you are attempting to discard documents prior to the implementation of the law.

3. Create A Message from the Secretary

The Office of Open Records recommends that the Secretary or senior level deputy issue a memorandum to staff informing them that the new law takes effect on January 1, 2009 underscoring the importance of all staff members to prioritize RTK requests. The memo should identify the Agency's RTK Officer and mandate that staff direct any RTK request to the Officer and/or to the Agency Counsel for review. Press coverage of RTK requests often identify Commonwealth and local agencies that ignore or delay in responding to requests. Employees become very busy with their own work and often RTK requests do not receive a high priority. The Secretary should ensure that staff members at all levels realize the importance of responding to the RTK officer timely so that the Agency does not fail to comply with the deadlines in the new law, which could result in fines.

4. Draft Rules and Regulations

The Office of Open Records is required to promulgate regulations relating to the process and appeals involved in the implementation of this Act. The Office of Open Records is in the process of establishing Interim Guidelines

and a statement of policy that will outline rules and regulations. These Interim Guidelines will be available by mid-October and will serve as immediate guidance until the formal regulations are approved during the 2009-2010 Legislative Session. The OOR intends to gather as much public comment and input as possible prior to the regulations being published in final form.

Each Agency is permitted by law to create rules necessary to implement the Act. If your Commonwealth Agency intends to create rules and regulations regarding the implementation of the Act, the OOR suggests that you consult with the Interim Guidelines established by OOR and also to consider the following:

- Keep in mind that many citizens have physical challenges that may prevent them from filling out a form, and not all citizens share the same level of comfort reading and writing. Commonwealth and Local Agencies should be sensitive to these considerations.
- Public bodies may fill verbal, written or anonymous verbal or written requests for access to records. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request for access to records must be in writing.
- Agencies should be advised that a written request need not include any explanation of the requestor's reasons for requesting the information or the intended use of the information unless otherwise required by law.

5. Right to Know Request Forms and Response Letters

The law requires the Office of Open Records to create a Uniform Request Form that must be accepted by all Commonwealth Agencies, in addition to any form used by the Agency to file a request under this Act. The Office of Open Records' form is available on our website, <http://openrecords.state.pa.us>, under FORMS.

As a resource to your Agency, the Office of Open Records also has developed sample letters that can be used by an Agency in responding to a RTK request. These include a letter that can be used when an Agency grants a request; denies a request, partially denies and partially grants a request. These sample letters are available on our website and can be downloaded for your convenience. You are not required to use them but you may find them useful in creating uniform responses to requests.

6. Update Agency Website

The law requires that an Agency publically post certain information. Section 504 of the law states that the following information shall be posted at each agency and, if the agency maintains an Internet website, on the agency's Internet website:

- (1) Contact information for the open-records officer
- (2) Contact information for the Office of Open Records or other applicable appeals officer
- (3) A form which may be used to file a request.
- (4) Regulations, policies and procedures of the agency relating to this act.

The Office of Open Records recommends that the RTK Officer work with the Agency's Information Technology staff to ensure that this information is contained on the Agency Website. The Agency should consider linking to the Office of Open Records website, <http://openrecords.state.pa.us>.

Senior management of an Agency should consider whether it wishes, as a policy matter, to put all RTK requests and responses on its website. In my experience, doing this is helpful to the Agency. It alleviates the number of RTK requests because citizens are able to obtain certain information on the website and can view other requests and responses that have been made before deciding whether to file a RTK request.

7. Conduct Agency Training

The Office of Open Records recommends that each Agency conduct a mandatory internal training session on the new law for all Agency staff. The Office of Open Records is available to assist in this training or to conduct the training for your Agency.

A critical part of this training should include a discussion of electronic mail. Agencies and employees should be advised that as a general rule, electronic mail is a public record and available for inspection and copying. It does not mean that there will necessarily be a wholesale release of one's email under a RTK request. It does mean that electronic mail goes through the same analysis as any other document to determine if it is a record and a public record available for inspection and copying.

The best form of training on electronic mail is to remind Agency employees, in plain terms, that they should not write an email that they do not wish to read on page one of a newspaper. Of course, electronic mail is a necessary tool in accomplishing the work of government and should be used. But all of us should be reminded to employ the same care, grammar and decorum in writing an email as in writing a formal letter on letterhead.

8. Record Keeping

The Office of Open Records recommends that Commonwealth Agencies consider another critical date as they implement procedures under the new RTK law: December 2009. As part of year-end reviews, many news organizations will file RTK requests with Commonwealth Agencies seeking a copy of all RTK requests handled by the Agency during 2009. The purpose of these requests will be to assess how each Agency has performed with the new law, specifically whether the Agency has complied, ignored requests, or denied records. The report card may also include a review of how many Agency decisions were recommended to be reversed or upheld by the Office of Open Records, or ultimately by a court. The Office of Open Records recommends that each Agency maintain meticulous records with regard to requests received and dispositions of the request, and consider creating a database or spreadsheet to track requests. This will enable an agency to tabulate its own track record and determine if the Agency is complying with the law or what areas could be improved.