

Guide for Law Enforcement Agencies

The Office of Open Records has received many questions specifically related to law enforcement agencies. Here is a list of the most frequently asked questions related to law enforcement records including whether police and sheriff departments are subject to the new law, how a local law enforcement agency should respond to a right-to-know request, what public records are available under the new law, what public records can be withheld and how much a law enforcement agency can charge for a report.

1. Who is covered by the new law?

- All local agencies – including police departments, sheriff’s departments as defined by law – are covered by this Act and therefore are required to comply with its provisions.
- Local agency is defined as: “[a]ny of the following: any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school. Any local, intergovernmental, regional or municipal agency, authority, council, board commission or similar governmental entity.”

2. How must a law enforcement agency respond to a right-to-know request?

- A local agency must respond in writing to a right-to-know request within five working days.
- Within five working days, the agency must respond in one of the following three ways:
 - Grant the request and provide the records
 - Deny the request in whole or in part, cite the reason for the denial and outline the appeals process for the requestor.
 - Invoke a 30 calendar-day extension.
- Within 30 calendar-days, the agency must:
 - Grant the request and provide the records
 - Deny the request in whole or in part: cite the reason for the denial and outline the appeals procedure for the requestor.

3. What are common public records of a law enforcement agency?

- **Examples of Public Records:**
 - Police blotters
 - Incident reports
 - Traffic reports
 - Emergency time response logs
 - Private criminal complaints
- **All records in possession of a local agency, including a law enforcement agency, shall be presumed to be a public record – UNLESS:**
 - i. The record is exempt under Section 708
 - ii. The record is protected by a privilege
 - iii. The record is exempt under any other federal or state law or judicial order or decree.

A privileged document is one that is covered by the common privileges such a attorney-client, attorney work product, doctor-patient, speech-and-debate, any other privilege recognized by PA Courts

4. What records of a law enforcement agency are exempt?

Examples of Records That Can Be Withheld

- Investigative materials
 - Confidential source information
 - Victim information
 - 911 calls and transcripts
 - Officer's field notes
- Section 708(b)(16) states that the following are exempt from access by a requestor: "A record of an agency relating to or resulting in a criminal investigation, including:
 - (i) Complaints of potential criminal conduct other than a private criminal complaint.
 - (ii) Investigative materials, notes, correspondence videos and reports.
 - (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
 - (iv) A record that includes information made confidential by law or court order
 - (v) Victim information, including any information that would jeopardize the safety of the victim.

- (vi) A record that if disclosed would do any of the following:
 - a. Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
 - b. Deprive a person of the right to a fair trial or an impartial adjudication.
 - c. Impair the ability to locate a defendant or co-defendant
 - d. Hinder the agency's ability to secure an arrest, prosecution or conviction
 - e. Endanger the life or physical safety of an individual.

Please be advised that the law states that §16 “shall not apply to information contained in a police blotter as defined in 18 Pa. C.S. § 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency, or in a traffic report except as provided under 75 Pa. C.S. § 3754(b) relating to accident prevention investigations.”

- Section 708(b)(17) states that the following are exempt from access by a requestor: “A record of an agency relating to a noncriminal investigation, including:
 - (i) Complaints submitted to an agency
 - (ii) Investigative materials, notes, correspondence and reports
 - (iii) A record that includes the identity of a confidential source including individuals subject to the act of December 12, 1986 (P.L. 1559, No. 169), known as the Whistleblower Law.
 - (iv) A record that includes information made confidential by law
 - (v) Work papers underlying an audit
 - (vi) A record that, if disclosed, would do any of the following:
 - a. Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.
 - b. Deprive a person of the right to an impartial adjudication
 - c. Constitute an unwarranted invasion of privacy

- d. Hinder an agency's ability to secure an administrative or civil sanction
 - e. Endanger the life or physical safety of an individual
- Section 708(b)(18) states that the following are exempt from access:
 - (i) "records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.
 - (ii) This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.
 - (iii)

5. Does a law enforcement agency have discretion to release a record that is exempt under the law?

Yes. The law states in **§506** that "an agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying" if all three of the following apply:

- a. disclosure of the record is not prohibited by federal or state law or regulation, judicial order or decree
- b. the record is not protected by a privilege
- c. the agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access

6. Can a police department withhold a record depending on how the requestor intends to use the record?

No. The law states that "a local agency may not deny a requester access to a public record due to the intended use of the public record by the requestor unless otherwise provided by law." **§302.**

7. How much can a police department charge for records?

Generally, police departments have the authority to charge up to \$15 per report for providing a copy of a vehicle accident report. 75 Pa.C.S. §3751 (b)(2). Philadelphia police may charge up to \$25 per copy. *Id.* at

(b)(3). State police are authorized to charge "\$5 for each copy of the Pennsylvania State Police full report of investigation." 75 Pa.C.S. §1956(b).