



Accessing Public Records: Pennsylvania's Right to Know Law

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Pennsylvania's revised Right to Know Law, Act 3 of 2008, was signed by Governor Rendell on February 14, 2008 and became fully effective on January 1, 2009. This law provides updated policies and procedures for access to public records, such as forms, e-mails, letters, tapes, photographs, and recordings created by any state government entity, including Commonwealth departments, agencies, state universities, local governments and the judiciary.

How is the new law different?

The Right to Know Law brings Pennsylvania one step closer to government transparency by amending the previous version of the Right to Know law in two important ways:

First, the law creates an Office of Open Records, which is charged with administering certain provisions of the Right to Know Law. When a Right to Know request is denied by a government entity, the person requesting the records can appeal the denial to the Office of Open Records. The Office of Open Records also issues advisory opinions to government agencies and requesters of information. In one of its first advisory opinions issued on February 22, 2009, the Office of Open Records determined that audio recordings of borough council meetings are public records subject to disclosure, whereas such audio recordings had been exempt from disclosure under the previous law.

Second, the new Right to Know Law shifts the burden for proving that a record is a public record subject to disclosure. Under the previous Right to Know Law, the person requesting the record had the burden of proving that the record was a public record subject to disclosure. The new Right to Know Law shifts that burden to the government entity. After denying a Right to Know request, the government entity now has the burden of proving that the requested record is not subject to disclosure. This means that a record in the possession of a government entity is presumed to be a public record and available for disclosure unless the government entity can provide a legal basis for not disclosing the record. A public record may be withheld only if a state or federal law or regulation or judicial order prevents disclosure of the record, or the record falls into one of the exceptions of the Right to Know Law. Those exceptions are designed to ensure the privacy of an individual's data not related to government action, such as DNA information, autopsy reports, social security numbers, financial information, an individual's marital status, the identity of an undercover officer, home addresses of government officials and information about crime victims. Records may also be withheld if disclosure would violate the attorney-client or physician-patient privilege.

What is the procedure for requesting public records?

Each government entity must designate an open records officer to whom all Right to Know requests should be directed. Right to Know requests must be submitted to the entity's open records officer in person or in writing. The government entity has five business days to respond to the request. The government entity's response must include the records requested, or else state the reasons for denying access to the requested records. The government entity may also request an automatic thirty day extension to respond to the request if the request is extensive, requires legal review or includes documents that have been archived at another location.

If an agency denies a written Right to Know request, the requester can appeal the denial to the Office of Open Records within fifteen days. The Office of Open Records then has thirty days to make a final determination regarding the availability of the requested records. A hearing may or may not be held. Once the final determination regarding disclosure is made by the Office of Open Records, the requesting individual or the agency from which the documents were requested may appeal the determination in the Court of Common Pleas or Commonwealth Court.

For more information about public records, Right to Know requests or Freedom of Information Act Requests, please contact Ryan P. Siney at (717) 234-4121 or rsiney@tuckerlaw.com.