



Pennsylvania Gaming Control Board



Right to Know Law Policy and Procedure As Amended, December 29, 2021

In accordance with the Right-to-Know Law, 65 P.S. §67.101 et seq. (RTKL), which can be viewed in its entirety at <https://www.openrecords.pa.gov> and the Pennsylvania Race Horse Development and Gaming Act, the Pennsylvania Gaming Control Board (“PGCB” or “Board”) sets forth the following policies, process, and procedures, regarding the receipt of RTKL Requests and Board responses to requests made pursuant to the RTKL.

To facilitate access to documents of public interest and reduce the need for RTKL requests, the Board makes many documents public on its website at www.pgcb.pa.gov. The Board also uploads contracts to the Department of Treasury’s website www.patreasury.org, pursuant to the requirements of Chapter 17 of the RTKL, 65 P.S. §§ 67.1701-1702.

I. REQUESTS

A. Written Requests must:

1. Be addressed to the Board’s Open Records Officer at:

Pennsylvania Gaming Control Board
ATTN: Open Records Office—Deborah C. Joyce
303 Walnut Street, Strawberry Square
Commonwealth Tower, 5th Floor
Harrisburg, PA 17101-1825
Fax: (717) 346-8350
pgcbtrklrequests@pa.gov

Requests clearly identifiable as RTKL requests, but received in other offices will be forwarded to the Open Records Officer; however, the request will not be considered received until the Open Records Officer has received the request;

2. State that the request is being made pursuant to the RTKL;
3. Be submitted in writing by mail, by facsimile, in person, or by e-mail;
4. Be made on the form designated on the Board's website www.pgcb.pa.gov or the form provided by the Office of Open Records <https://www.openrecords.pa.gov>.
5. Be sufficiently specific to enable the Board to ascertain which records are being requested; and
6. Be from a person that is a legal resident of the United States.

Note: Only requests that can be identified as a RTKL request either by designation "RTKL," "Open Records Officer," or other language that makes it clear that the request is being made under the RTKL will be forwarded to the Open Records Officer. If a request does not clearly identify itself as a RTKL request, the request will be treated as a general request and no privileges under the RTKL will attach.

B. Verbal and Anonymous Requests:

The Board may fulfill a verbal and/or anonymous request. If such a request is made:

1. An individual who makes a verbal request has no relief or remedies under the RTKL; and
2. The requester must provide a name and address to which the response may be sent, unless the requester has made prior arrangements to pick the records up from the Right to Know Law Office.

C. Regular Business Hours of the RTKL Office:

8:30 AM to 4:00 PM, Monday through Friday, excluding holidays and days when the Board Office is closed for a full/partial day.

RTKL requests received by the RTKL Officer after the close of the RTKL Office's regular business shall be deemed to have been received by that Office on the following business day. See 65 P.S. § 67.901.

D. Disruptive Requests:

An individual's repeated requests for the same record that places an unreasonable burden upon the Board will be denied.

E. Requester's RTKL Request:

RTKL requests received by the PGCB will be considered a "public record" and may be provided for public access through its website or by other available means.

II. RESPONSES

The Open Records Officer may respond by providing a requester with an electronic copy of a record, if maintained in that format, or as otherwise maintained by the Board, either: 1) by providing access at the offices of the Board, 2) by sending a copy to the requester, or 3) by notifying the requester that the record is available through publicly accessible electronic means. Each of these options is a "response" for purposes of the RTKL, as is the Board's written notice to the requester granting, denying or partially granting and partially denying access to a record. The Board may send written responses to requesters by United States mail, by hand (in person or by delivery service), by facsimile or by e-mail to the address provided by the requester on the request form. Once sent to the address provided, the request will be deemed answered and the matter closed.

Unless a longer period of time is needed and communicated to the requester by an "interim response" (as discussed in paragraph A below), the RTKL requires that the Board respond to a RTKL request within five business days. For purposes of determining the end of the 5-business day period, the day that a RTKL request is received is not counted. The first day of the 5-business day period is the Board's next business day.

A. Interim Responses:

The Open Records Officer may send an interim response, invoking the Board's right to a thirty (30) day extension, if any of the following applies:

1. The RTKL request requires redaction of a public record;

2. The RTKL request requires retrieval of a record from a remote location or from a third party;
3. A response within the 5-business day period 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 the Act;
5. The requester has not complied with the Board's policies regarding access to public records;
6. The requester has not complied with a demand for prepayment of fees. If prepayment of fees is required by the Board, the time period for response shall be tolled from the time the demand for payment is made until such time as payment is actually received; or
7. The extent or nature of the request precludes a response within the required time period.

Any such interim response must: 1) be sent to the requester on or before the last day of the 5-business day period; 2) state that the request is being reviewed and the reason for the review; 3) if applicable, give an estimate of applicable fees owed when the records are available at which time the requester must pay in full; 4) if applicable, notify the requester that he/she owes fees to another agency and records will not be provided to him/her until both fees are paid; and 5) state a reasonable date that a response is expected to be provided. This date must not be more than 30 calendar days from the end of the 5-business day period. See 65 P.S. § 67.902.

The PGCB shall also send an interim response when the estimated fee for responding to the request is in excess of \$100. Once the estimated payment is received, the Board will proceed to: 1) make a final determination as to what records, if any, are public records under the RTKL, 2) begin search and retrieval of those records, 3) perform any required redaction and 4) advise the requester, within 30 days, as to a date when any responsive public records will be produced. Failure to make an estimated payment by the date required by the Board in its interim response will result in the request being deemed withdrawn.

If the response is expected to take in excess of the 30 days invoked by the Board after the initial five-day period and the requester will not agree to an extension beyond the thirty days, the request will be deemed denied.

Note: If the information requested is clearly confidential, the Board may request a waiver of confidentiality from any party whose records are at issue. This action will likely require the 30-day extension outlined above in subsection A (4) and (7), and the requester will be notified accordingly.

B. Final Responses:

The request will be:

1. Granted,
2. Denied, or
3. Granted in part and denied in part.

The failure to make a timely response is deemed to be a denial.

If a written request is denied in whole or in part, the Board will issue a final written response that will include an explanation of the procedure for the requester to appeal, if the requester chooses to do so. The written denial will also set forth the specific reasons for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is exempt from disclosure, the specific reasons for the Board's determination shall be included.

If the PGCB, after a good faith search, is unable to produce any responsive records that response is not a denial of access.

C. Redaction:

The Board will not deny access to a public record based upon the fact that portions of the record are confidential and, as a result, not subject to disclosure. The Board will redact the portions that are confidential and produce the portions that are public records.

If a record is a non-public record, the record is exempt in total and no redactions will be made.

D. Access:

1. The Board may provide a requester with access to inspect a record electronically or as otherwise maintained by the Board, either:
 - a) by granting access to inspect Agency Records during the Agency's regular business hours.
(Required when records are extraordinarily extensive - i.e. a box or more);
 - b) sending copies of the records to the requester; or
 - c) by notifying the requester that the records are available on the Agency website or other publicly accessible electronic means.
2. The Board will provide a public record to a requester in the medium in which it is requested, if the record exists in that medium. Otherwise, the public record must be provided in the medium in which it exists. The Board will provide public records in the medium in which it exists, unless the Board determines in its discretion that it is more effective and efficient to the Board to produce it in another medium.
3. The Board will not create a public record that does not already exist, nor is it required to compile, maintain, format, or organize a public record in a manner or medium which the Board does not maintain at the time of the request.
4. The Board has the discretion to determine the building(s) and room(s) that will be used to provide a requester with access to the Board's public records. The selection of buildings and rooms for access to the Board's public records is a matter within the discretion of the Open Records Officer.

E. Duplication of Public Records (See Fees in Section IV):

The Board may:

1. Make copies of the records;

2. Allow the requester to bring a copier or scanner without an automatic feeder to make its own copies. Any copier or scanner brought for this purpose shall be subject to review and inspection by the Board prior to its use;
3. Allow the requester to photograph documents; or
4. Contract with a duplication service and require the requester to pay the applicable rate.

III. APPEALS

When a request is denied or deemed denied, whether in whole or in part, the requester may file an appeal with the Office of Open Records, where it will be assigned to an Appeals Officer. This appeal must be filed within 15 business days of the mailing date of the Agency's denial, partial denial or deemed denial of the request. All appeals must be in writing; must state the grounds upon which the requester asserts that the requested records are public records; and must address any grounds stated by the Agency for denying the request. The appeal shall be sent to the Office of Open Records at the address set forth below and simultaneously to the PGCB's Open Records Officer, in the same manner as the appeal is sent to the Office of Open Records (e-mail, fax, mail, or hand delivery) with:

1. The RTKL request,
2. The Board's response, and
3. The appeal form that is available on the Office of Open Records website at:

<http://www.openrecords.pa.gov/Appeals/AppealForm.cfm>

The Commonwealth Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101
Phone: 717-346-9903
Email: openrecords@pa.gov

A person other than the Board or the requester, with a direct interest in the record that is subject to an appeal, has 15 days following actual knowledge of the appeal,

but no later than the date the Appeals Officer issues an order, to file a written request to provide information or to appear before the Appeals Officer in support of the requester's or the Board's position in the appeal. The Appeals Officer may, but need not, grant the request.

Note: Under 65 P.S. §1304, a court may impose sanctions, including attorney fees and costs of litigation frivolous requests or appeals.

IV. Agency Notification of Third Parties on Appeal

Agency must notify third parties. If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, the Agency must notify such parties of the appeal immediately and provide proof of that notice to the OOR within 7 business days from the date of the OOR's Official Notice of Appeal. Such notice must be made by (1) providing a copy of all documents included with the appeal to the OOR; and (2) advising that interested persons may request to participate in the appeal. *See* 65 P.S. § 67.1101(c).

V. Mediation

The RTKL requires the OOR to establish an informal mediation process to resolve disputes under the RTKL. 65 P.S. § 67.1310(a)(6). This is a voluntary process to help parties reach a mutually agreeable settlement on records disputes before the OOR. Mediation, a facilitated conversation between the parties that can serve as a fair and efficient tool to resolve conflict, can save time and expense. When appropriate, the Agency is open to resolving RTKL disputes through the OOR's mediation process.

VI. FEES

A. Fees Determined by the Office of Open Records:

Under the RTKL, the Office of Open Records has the authority to establish two fees for Commonwealth agencies: Duplication, 65 P.S. §67.1307(b) and Enhanced

Electronic Access (an agency may establish user fees, subject to approval by the Office of Open Records), 65 P.S. 65 P.S. §67.1307 (e).

The fees for duplication are established by the Office of Open Records, as posted on its website at <https://www.openrecords.pa.gov>. Unless otherwise directed by statute, the Board will charge \$.25 per page for duplication.

The Board may waive duplication fees for 20 pages or less. Duplication charges are to be paid for any duplication in excess of 20 pages.

B. Specialized Fees:

1. The PGCB will charge \$1 per copy for certified copies, in addition to the \$.25 per page, when requested by the requester.
2. The PGCB will charge the actual cost for postage, facsimile/microfiche, or other media, as well as for specialized documents, except that postage fees will be waived for postage that costs under \$1.00.

C. Reasonable and Necessarily Incurred Costs:

As expressly provided by 65 P.S. §67.1307(g), the PGCB has the authority to charge requesters reasonable fees for necessarily incurred costs. The Board will determine and charge such fees on a case by case basis.

D. Transcripts of Administrative Proceedings (§67.707(c)):

1. Prior to an adjudication becoming “final, binding, and non-appealable,” transcripts should be provided to the requester by the Board stenographer or a court reporter, in accordance with the applicable contract with the stenographer. The stenographer or court reporter is permitted to charge the regular fees for this service.
2. Following an adjudication becoming “final, binding, and non-appealable,” a transcript of an administrative proceeding shall be provided in accordance with the duplication costs established above.

All applicable fees must be paid in order to receive access to any record requested. 65 P.S. §67.901. Any requester who has unpaid amounts outstanding to the PGCB or to any other state agency, in relation to RTKL requests where production was made by any such agency, will not be granted access to records under a RTKL request until such prior amounts due have been paid in full.

Note: If the estimated fees required to fulfill the RTKL request exceed \$100, the Board requires that the requester pay an estimated amount in advance, either by certified check, bank check, or money order paid to the Pennsylvania Gaming Control Board and designated “RTKL Request.”

The demand for prepayment may specify a reasonable period of time in which the requester must make such prepayment. If the requester fails to make prepayment within the specified time, the Board will deem the request abandoned and not produce the records requested.

VII. Additional Information about the RTKL

Additional information about the RTKL, the request process, and the appeal process is available on the OOR website at <https://www.openrecords.pa.gov>.