

RIGHT TO KNOW LAW POLICY **(Effective January 18, 2014)**

The Pennsylvania Department of Agriculture (“PDA”) offers this document as its statement of the policies, procedures and processes by which PDA will accept, handle and respond to requests made pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §67.101 *et seq.* This Document is effective January 18, 2014, and supplants an earlier Right-to-Know Law Policy that took effect May 27, 2011.

Section 504 of the RTKL requires that PDA post this information on its agency website. This posting is also in compliance with the policies set forth in Management Directive 205.36 (issued March 18, 2010), titled *Right-to-Know Law Compliance*. This Management Directive can be viewed at: http://www.portal.state.pa.us/portal/server.pt/community/management_directives/711.

In order to facilitate access to documents of public interest and reduce the need for RTKL requests, PDA routinely makes many documents readily accessible by the public at the PDA website: www.agriculture.state.pa.us. With respect to information relating to solicitations, awards and contracts, the Department of General Services makes this information available through its website: www.emarketplace.state.pa.us. The Department of the Treasury maintains a large library of contracts – including many PDA contracts – at its *State Contracts E-Library* website: <http://contracts.patreasury.org/search.aspx>.

I. REQUESTS

A. Written Requests.

A written request to PDA under the RTKL must:

1. Be addressed to PDA’s Agency Open Records Officer (“AORO”) at:

Pennsylvania Department of Agriculture
ATTN: Susan West, AORO
2301 North Cameron Street
Harrisburg, PA 17110-9408

E-mail address: RA-AG-RTK@pa.gov

2. Identify a name and address to which PDA should address its response;
3. Indicate that the request is being made pursuant to the RTKL;
4. Be submitted in person, by U.S. Mail (to the address above), by e-mail (to RA-AG-RTK@pa.gov) or by facsimile (to 717 / 346-3301);

Note: A faxed RTKL request should be sent to the fax number provided immediately above. A faxed request that is sent to that fax number outside of PDA's normal business hours (8:00 a.m. through 4:00 p.m., Monday through Friday, excluding holidays and office closures) will not be accepted by PDA until normal business hours resume.

5. Be sufficiently specific to enable PDA to ascertain which records are being requested; and
6. Be from a person that is a legal resident of the United States.

B. Verbal Requests.

While verbal requests may be fulfilled by PDA, the requester cannot pursue the relief and remedies provided under the RTKL (including the right to file an appeal) unless the request is in writing.

C. Request Forms.

A written request to PDA under the RTKL must contain certain specific information, which is detailed above. If a requester would prefer to use an approved *preprinted form* to make a written RTKL request, there are three acceptable preprinted or preprogrammed forms available:

1. The on-line electronic version of the PDA Right-to-Know Request Form accessible through the PDA website: www.agriculture.state.pa.us.

Note: This form can be completed on-line and electronically transmitted directly to the PDA Agency Open Records Officer.

2. The downloadable, printable PDA Right-to-Know Request Form available through the PDA website, at www.agriculture.state.pa.us.
3. The downloadable printable form available through the website of the Office of Open Records, at: <http://openrecords.state.pa.us>.

D. RTKL Requests are Public Record.

RTKL requests received by PDA will be considered "public record" information by PDA. PDA may make these requests available for public access through its website.

E. RTKL Office.

The regular business hours of the RTKL Office are 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays and office closures. Any RTKL request received after the close of regular business hours shall be denoted as being received by that office on the following business day.

II. RESPONSES

A. General.

The AORO may respond to a Right-to-Know Law request that is directed to PDA by providing a requester with access to records through any of the following means:

1. by providing access to the records (whether the records are paper, electronic or in some other form or format) in the offices of PDA, if agreed to by the requester;
2. by sending a copy to the requester; or
3. by: (a) notifying the requester that the record is available through publicly accessible electronic means, and further advising that if the requester is unable or unwilling to access the record electronically the requester may – within 30 days following receipt of the notification from PDA – write PDA and request that the record be converted to paper and provided to the requester; and (b) providing that record if such a written request is made and any applicable payment is made.

Each of these three actions is a "response" for purposes of the RTKL, as is PDA's written notice to the requester: (a) granting access to a record; (b) denying access to a record; (c) partially granting and partially denying access to a record; or (d) confirming that the record sought is not in the possession, custody or control of PDA. Unless specified in the request, PDA may send written responses to requesters by United States mail, by hand (in person or by delivery service), by facsimile or, by e-mail.

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 PDA respond to an RTKL request within five business days. For purposes of determining the end of the five-business-day period, the day that a RTKL request is received is not counted. The first day of the five-business-day period is PDA's next business day.

Example 1: A written RTKL request is received by PDA's Agency Open Records Officer during normal business hours on a *Monday*. That date – Monday – is the date the request was received, and PDA must send its response within five business days of that date. Assuming there are no holidays or office closures within the next five business days, PDA's response must be sent *no later than the following Monday*.

Example 2: Same facts as Example 1, except that the written RTKL request is e-mailed, faxed or delivered to PDA's Agency Open Records Officer's office *after normal business hours* on a Monday. For purposes of calculating the response interval, the request is not "received" until: (a) business hours resume (on Tuesday); and (b) PDA's Agency Open Records Officer receives it. Assuming these occur on Tuesday, PDA's response must be sent *no later than the following Tuesday*.

Example 3. Same facts as Example 1, but the date on which PDA's response would ordinarily be due is a weekend day, a holiday or a day when PDA's business offices are closed. PDA's response must be sent on the next day that PDA's business offices are open.

B. Interim Responses.

PDA must provide a final response to a RTKL request within five business days unless one or more specific conditions are satisfied and the AORO gives the requester written notice that additional time will be required. That notice is referred to as an "interim response."

The AORO *may* send an interim response if any of the following apply:

1. The RTKL request requires redaction of a public record.
2. The RTKL request requires retrieval of a record from a remote location.
3. A response within the five-business-day period cannot be accomplished due to bona fide staffing limitations, which limitations must be specified in the interim response.
4. A legal review is necessary to determine whether the record requested is subject to access under the Act.
5. The requester has not complied with PDA's policies regarding access to public records.
6. The actual or estimated fees to fulfill the RTKL request are \$100 or more and the requester has not complied with a demand for prepayment of these fees.

Note: Prepayment of fees (or prepayment of *estimated* fees, where the actual fees have yet to be determined) totaling \$100 or more is required by PDA. 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.

7. The extent or nature of the request precludes a response within the required time period.

An interim response must:

1. be sent to the requester on or before the last day of the five-business-day period;
2. state that the request is being reviewed and the reason for the review;

3. state the exact fees owed, where these fees are known or – where the actual fees are *not* known – state an *estimate* of applicable fees owed when the record becomes available; and
4. state a reasonable date – not more than 30 calendar days from the end of the five-business-day period – that a response is expected to be provided.

Note: If the date of an expected response is in excess of 30 days following the five business days allowed for under the RTKL, the request will be deemed denied unless the requester has agreed in writing to the date specified in the notice provided by PDA.

The AORO *will* send an interim response when fees (whether actual fees or estimated fees) are owed with respect to the RTKL request *if these fees are known or estimated to be \$100 or more*. Once the payment or estimated payment is received, PDA will:

1. make the 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 the date by which any responsive public records will be produced.

Failure to make the estimated payment by the date required by PDA in an interim response will result in the request being deemed withdrawn.

C. Final Responses.

There are four possible final responses:

1. the request is granted;
2. the request is denied;
3. the request is granted in part and denied in part; or
4. the requested records are not in PDA's possession, under its custody or under its control.

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

If a written request is denied in whole or in part, or if the records sought are not in the possession, custody or control of PDA, PDA will issue a final written response that will include an explanation of the procedure by which the requester may 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 that the record requested is exempt from disclosure, the specific reasons for PDA's determination shall be included.

If PDA conducts a good faith search for responsive records and is not able to locate any such records in its possession, under its custody or in its control, the non-production of records is *not* a denial of access. PDA cannot "deny" access to records that are not in existence or are not in PDA's possession, under PDA's custody or in PDA's control.

D. Redaction.

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

E. Access.

PDA may provide a requester with access to inspect a record electronically or as otherwise maintained by PDA, by:

1. providing access in the offices of PDA, if agreed to by the requester; or
2. sending a copy to the requester; or
3. (a) notifying the requester that the record is available through publicly accessible electronic means, and further advising that if the requester is unable or unwilling to access the record electronically the requester may – within 30 days following receipt of the notification from PDA – write PDA and request that the record be converted to paper and provided to the requester; and (b) providing that record if such a written request is made and any applicable payment is made.

PDA has the discretion to determine the building(s) and room(s) that will be used to provide a requester with access to PDA's public records. The selection of buildings and rooms for access to PDA's public records is a matter within the discretion of the AORO.

PDA will provide a public record to a requester in the medium requested if the record exists in that medium. Otherwise, the public record will be provided in the medium in which it exists. If a public record only exists in one medium, PDA is not required to convert that public record to another medium, except that if the public record is only available in an electronic form, PDA must print it out on paper if the requester so requests.

PDA is not required to 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 in which PDA does not currently do so.

F. Duplication of Public Records.

PDA may either make copies itself or, in its discretion, allow the requester to bring the necessary equipment to make its own copies. PDA may make its duplication equipment available to a requester but require that the requester operate the equipment; assign PDA staff to make the duplications; or contract for duplication services 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 by the requester within 15 business days of the denial or deemed denial. The appeal must state the grounds upon which the requester asserts that the record is public, or reasons why the Agency was wrong in its response to the request. It should address any grounds stated by PDA for delaying or denying the request and what relief or agency action is sought. The appeal shall be sent to the Office of Open Records at the address set forth below, and simultaneously to the AORO in the same manner as the appeal is sent to the Office of Open Records (e-mail, fax, mail or hand delivery) with:

1. PDA's response to the request;
2. the RTKL request; and
3. the appeal form that is available through the Office of Open Records website at: <http://openrecords.state.pa.us>. The address of the Office of Open Records is as follows:

The Commonwealth Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
Phone: 717-346-9903
Email: openrecords@state.pa.us

A person other than PDA 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 PDA's position in the appeal. The Appeals Officer may, but needs not, grant the request.

For further information on appeals, it is suggested that the requester review the website of the Office of Open Records.

IV. FEES

Applicable fees to be charged by PDA under the RTKL are as follows:

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. §67.1307(e).

The fees for duplication are established by the Office of Open Records, as posted on its website at <http://openrecords.state.pa.us>. Unless otherwise directed by statute, PDA will charge \$.25 per page for duplication, but will only charge this fee when the total number of pages exceeds twenty (20).

B. Specialized Fees.

1. PDA will charge \$1 per copy for certified copies, when requested by the requester.
2. When a fee for duplication is also being charged, PDA will charge the actual cost for postage, facsimile/microfiche or other media, as well as for specialized documents. PDA will not charge postage fees where for postage costs of less than \$1.00.
3. Special rules apply to fees for transcripts of administrative proceedings:
 - (i) Prior to an adjudication becoming “final, binding and non-appealable,” transcripts may be requested through PDA, however the stenographer or court reporter is permitted to charge the regular fee for this service.
 - (ii) Following an adjudication becoming “final, binding and non-appealable,” a request for the transcript shall be treated like any other request for a record and the usual duplication fee of up to \$.25 per page will be charged.
4. PDA will charge such other fees as were established prior to the adoption of the RTKL for complex and extensive data sets, including geographic information systems. These fees need not correspond to the total number of copies produced.

C. Reasonable and Necessarily Incurred Costs.

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

D. General.

A fee will be assessed for all requests that require greater than 20 copies in accordance with the provisions above. Fees for complex and extensive data sets will only be waived in accordance with the provision of the RTKL at 65 P.S. § 67.1307(b)(4)(ii).

PDA will review and determine the appropriateness of any fee waiver request on a case-by-case basis. If PDA provides a non-discriminatory reason for denying a fee waiver request, there is no right to appeal that determination.

No charge shall be made for agency or legal review of the record to see whether the requested records are public records that are subject to production.

The requester must pay in advance the actual fees owed, or PDA's estimate of the fees where the actual fees are not known, where these known or estimated fees are \$100 or more. Payment must be by certified check or by ordinary check, which must first have cleared to be considered received by PDA. The demand for prepayment may specify a reasonable period of time in which the requester must make such prepayment. Failure to make a payment (whether of actual or estimated fees) by the date required by PDA in its interim response will result in the request being deemed withdrawn.

Where an estimated fee is paid by a requester and the estimated fees are subsequently calculated to have been *lower* than the actual fees, PDA will provide the requester a statement showing how the actual fees were calculated, and the requester will promptly pay the difference to PDA.

Where an estimated fee is paid by a requester and the estimated fees are subsequently calculated to have been *higher* than the actual fees, PDA will provide the requester a statement showing how the actual fees were calculated, and will promptly pay the difference to the requester.

Where fees are known or estimated to be \$100 or more, these fees must be paid in order to receive access to the record requested. (See the RTKL, at 65 P.S. § 67.901). PDA will notify the Office of General Council (OGC) of any requester who has unpaid fees. OGC will maintain a listing across administrative agencies of requesters with unpaid fees. Any requester who has unpaid amounts outstanding to PDA or to any agency under the Governor's jurisdiction, in relation to RTKL requests where production was made by any such agency, may not be granted access to records under other RTKL requests until such prior amounts due have been paid in full.

PENNSYLVANIA DEPARTMENT OF AGRICULTURE


George Greig, Secretary