

# Action School Districts Can Take in Preparing Themselves for Implementation of Pennsylvania's Right-To-Know Law

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Pennsylvania Governor Edward G. Rendell signed the new Right-To-Know Law on February 14, 2008, fundamentally changing the way people access public records of their government. This law will take effect January 1, 2009 statewide and is based on the presumption of openness. For the first time in Pennsylvania history, citizens no longer have to prove that a record is public and that it should be released and/or available. Now, a government agency must presume that a record is a public record available for inspection or copying. If the government agency chooses to withhold a record, the agency has the burden to prove with legal citation and process, why that record should not be made available to the public. With a 100% burden of proof put on the government agency, in this case, school district, agencies need to look to reason why there is a reason to withhold.

School districts need to designate an "Office of Open Records" and appoint an open records officer to manage and facilitate requests. This senior level position will entail someone who is knowledgeable of records management, resource skills, able to communicate to public and media, knows the legal ramifications, knows how to access records and where and is able to fulfill requests while knowing when the exceptions outlined in the law are deemed appropriate. It is extremely important for school districts to recognize that it is a priority district wide, that if a request for Right to Know is made, they must forward immediately that request to the designated Open Office Records Officer, as there are processes within the law which take effect immediately that are assumed by the school district or agency. The mission of the Open Records Officer is to apply the law evenly and fairly regardless who is making the request and holding them accountable by providing citizens a copy of their requested record.

The request for public records can be made by and in person verbally, by fax, e-mail, or mail to the agency's designated Right To Know officer within the school district. However, a requestor cannot ask for records by telephone. If the request is made verbally, the agency does have the right to require a request be made in writing in the event there is an appeal process. However, this request can also be made anonymous and can then be picked up by the requester at the issuer's office. In the case of school districts, this request can be made verbally to a school employee, who then should immediately forward it to the attention of the designated officer as soon as possible. For example, if the request comes to a school employee, the employee, has the obligation to bring the request to the designated office of open records immediately, as the "clock" begins then, within the normal course of business in meeting the request within the five business days. The law prohibits a school district from requiring a person "to disclose the purpose or motive in requesting access to records". However, the request must be sufficiently "specific" to allow the school district to identify what you are seeking. According to the

law, any legal resident of the United States can request a record, including a person with a green card. The requester does not have to be a resident nor taxpayer within your school district, it could be someone from across the country.

From the time of the request, the issuing agency has five (5) business days in which to send a letter in writing responding to the requester giving them a copy of their request for records, or denying their request for records due to one of the law's exceptions and explaining the bonafide reason as per not granting the request, or by providing an extension which is allowed up to 30 days and again, providing a reason as per why the extension was necessary. When granting access to a record, the agency is not required to mail a copy of the record out with their response by law. The agency may choose to do so, but, legally, the response simply has to notify the person whether "access" will be granted, denied, or partly granted and partly denied. This is not a big deal if a small sized record is involved, but if someone wants to review boxes of information but doesn't necessarily want copies of everything, it becomes a big deal. Therefore, five business days plus up to 30 calendar days to respond are about whether or not the requested record is a public record and whether or not access will be granted.

Agencies are not to provide automatic extensions due to lack of time or whatever reason, and extensions are kept record of, just as all requests fulfilled and denied. If the issuer denies a request, they must cite the actual section of the PA Right To Know Law and must inform the requester of their rights to appeal as outlined in the law. If there is an extension provided to a requester, the requester has to agree to the 30 day filing and be informed of the appeal process. With the appeal process, the requester has 15 days to invoke appeal and the issuer has 30 days to respond to the appeal. According to the law, there is a \$1,500 fine for not accommodating the requester and \$500 per day afterwards for not cooperating with the courts to disclose a record. In general, an open-records officer is immune from civil penalties for denying a request, but, the final discretion in regards to willful disregard of the law is determined by the courts. Public records are not exempt from law, federal regulation, or are not protected privilege. However, Section 708 of the law outlines 30 categories of exceptions and areas to be cautious in releasing and what types of information. It is very important, that your Open Records Officer knows what is Public Record Vs Privacy Rights, such as the exemption of releasing social security numbers of personnel or anything which is going to compromise identity theft within the district in any capacity or put them in harm's way. Some types of information **not made available:**

- Social Security numbers
- Driver's License numbers
- Employee Identification numbers
- Home, cellular, or phone numbers
- Personal financial information
- Spouse's name, marital status, beneficiary or dependent information
- Identity of confidential informants
- Autopsy reports, except name, cause and manner of death
- Records which identify social service recipients, including welfare recipients

- A minor's name, home address, date of birth
- Constituent requests to a member of the House or Senate
- Library circulation cards
- Pre-decisional deliberations

Examples of public records **to be made available:**

- Grant Applications
- Contracts
- Agreements
- Agency Decisions
- Name, Title, and Salary of Public Employees and Officials

Without knowing ahead of time how many requests will be made by the public, it will be difficult to plan ahead. However, there are many interventions which school districts can do ahead of time in planning accordingly:

1. Have knowledge if your district has a "Records Retention/Management Policy" and get an overview of what records are visible and available and where to access them. Understand what your record retention law requires and organize your records. Know how to be resourceful in meeting various requests and when and when not to contact your solicitor. If you do not have a records retention/management policy then you need to have one implemented prior to January 1, 2009. School districts will also need to determine fees for copying services as the State Open Records Dept. has not yet determined standard statewide fees. These standard fees should be implemented no later than November 2008.
2. Facilitate Staff In-Service Training and Informational Meetings to Alert and Educate ALL STAFF and EMPLOYEES DISTRICTWIDE.
3. Make it a PRIORITY within your school district that if anyone receives a request for Right To Know, they immediately send it to the Open Office Records Person and make sure everyone knows ahead of time who that designated person is.
4. Prepare and Organize Records which can take on many forms: books, tapes, CD's, E-mails, Electronic Pictures, Pictures...any information regardless of physical form.
5. Make Uniform Request Forms and Make them Readily Available to Requesters
6. Put Uniform Request Forms and Information of Procedures on District Websites
7. Educate Public and Employees of Exceptions to the law in fulfilling requests and make these available on the district website as well.
8. Update past school policies and district wide operations and procedures to ensure compliance of the law.
9. Know where to go when in doubt and who to contact. There will be many unforeseen implications regarding this new law and unfortunately, there is the potential for abuse of the law, in the form of harassment based on numerous

requests from requesters as reported by other states who have already implemented the law. Be aware of that fact. But, do not use your copying fee rates as an intervention for deterring harassment or discouraging requesters. The Right to Know Law gives citizens the right to make copies of public records. However, public agencies (school districts) may adopt policies and enforce reasonable rules governing the making of these copies. Where a municipality has failed to exercise its right to make rules pertaining to copying and duplication of records, it cannot make ad hoc and possible variable determinations on a case by case basis. Fees are usually set on a per page basis. Some agencies also have set research fees where a request to review records involves extensive work on the part of employees to locate and retrieve old records. The law makes clear that agencies are not required to assemble, prepare, or produce records in a particular manner just for citizens seeking information under the statute. While a school district cannot limit the number of requests from any one citizen, citizens, in general, should utilize good judgment in seeking records and not use this law to harass or overburden a municipal government from doing its job.

It's just as important to note that the public agency is not required to provide copies to citizens requesting information. A school district is not required to furnish 500 copies of the requested documents even if the citizen agrees to pay for the copies. Agencies are not required to have their personnel work for others making duplications of public records. The decision of whether or not to make photocopies and provide them is left to the agency. In some cases, school districts are required to permit citizens to make copies on their own copier machine and return a document or stop at the office to view and inspect a document. The district has the responsibility to afford citizens the right to inspect and copy records and requires that public records be open for examination and inspection at reasonable times.

While the Right to Know Act applies to all municipalities in the state, including home rule municipalities, it only applies to inspection of public documents. This law does not give citizens the right to interrupt business meetings of public agencies at any time they desire to make remarks. Neither the Right To Know Law nor the guarantee of freedom of speech go so far as to allow citizens to interfere with the orderly processes of government as per having a school board meeting.

For additional support and resources, please contact the newly formed Open Records Department for sample letters, forms, and additional information at:

E-mail: [openrecords@state.pa.us](mailto:openrecords@state.pa.us)

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