



What's New in the Right to Know Law

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On February 14, 2008, Governor Rendell signed into law the Pennsylvania Right to Know Act (Act 3 of 2008), the latest version of the Open Records Act. The law includes some significant changes, which will affect borough governments. This document is intended to briefly highlight those changes. Note that the effective date of the Act is January 1, 2009, allowing sufficient time for procedural changes to be put in place.

The Presumption: Section 305 makes the general statement that all records are presumed to be public records unless they are specifically exempted under Section 708 (more about that later); or by another state or federal law or regulation; or by a judicial order or decree. This places the burden of proof on the borough to show why a particular record is not a public record.

The Open Records Officer: All boroughs are required to name an official or employee to serve as the Open Records Officer. Requests for records will be managed by this person, likely the borough manager or secretary, who will be charged with responding to the request. This will include noting the date of receipt of the request, the date a response is required (five business days from receipt), and the final determination, be it providing the record to the requestor or denying the request. Individual boroughs may develop a policy for handling requests, and that policy must be posted within the building, and on the borough website, if there is one. The posting must include contact information for the Open Records Officer, as well as for DCED's Office of Open Records (see below). As in current law, a requestor may not be questioned about why the record is requested. However, questions intended to focus or narrow the request are permissible.

The Appeals Process: Act 3 establishes an Office of Open Records within the Department of Community and Economic Development. This office will handle any appeals from a borough's denial of a request for a record. The next level of appeal is to the Court of Common Pleas. The Office of Open Records will also develop a standard request form, which boroughs must accept if a request is submitted on it. However, boroughs may opt to develop their own forms.

The Specific Exemptions: There are about 30 types of documents specifically exempted under Act 3. Summarized here, they include:

- Any records, the disclosure of which could result in loss of state or federal funds;
- Security records, including homeland security, infrastructure security, and computer security;

- HIPPA-type medical records;
- Personal identifiers such as social security numbers and phone numbers;
- Many, but not all, employee records;
- Collective bargaining or arbitration records until in final form;
- Draft forms of ordinances, resolutions, policies and other predecisional records;
- Trade secrets or proprietary information;
- Personal use notes and working papers;
- Investigative records;
- 911 recordings and records;
- DNA/RNA records;
- Minutes of meetings until approved and minutes of executive sessions;
(Note: minutes are not required for executive session, but included in act);
- Records of real estate transactions until decisions are final
- Library circulation records:
- Certain historical records, such as those that are fragile;
- Certain archaeological site information;
- Certain insurance information;
- Identifying information about a minor child.

Fees: As in current law, fees for postage are limited to the actual cost of mailing. Fees for duplication fall into two categories. The Office of Open Records will set fees for ordinary duplication of documents, and may take regional price differences into account. Fees for the duplication of large “data sets” may be based on market value of the information being duplicated. In most cases, the types of duplication required of boroughs will fall into the first category. Boroughs have the option to waive fees, and all fees must be “reasonable.” A borough may require a requestor to prepay the fee if it will exceed \$100. Note that if a requestor fails to pick up requested records that have been duplicated for the requestor, the borough may dispose of the copies after 60 days, and is not required to send reminder letters.

Penalties: As in current law, there is a civil penalty for denial of a request in bad faith. The penalty has been increased from \$500 up to \$1500. Failure to comply with a court order to produce a requested record is subject to a civil penalty of up to \$500 per day.