



# Pennsylvania Freedom of Information Coalition

4075 Linglestown Rd. #312, Harrisburg, PA 17112-1020

www.pafoic.org

## A QUICK GUIDE TO PENNSYLVANIA'S NEW OPEN RECORDS LAW

Effective January 1, 2009

Prepared 11/08

**Does the new law cover records created before January 1, 2009?** Yes. All records in the possession of an agency are covered after Jan. 1, 2009, even if they are decades old.

**What is the single biggest change under the new law?** Agencies now have the burden to establish why a record should not be released. The old law put the burden on a requester to establish why the record was a public record.

**What else has changed?** The law begins with the presumption that all records held by state and local agencies are publicly available, both for viewing and copying. Likewise, all *financial* records held by judicial agencies (courts) and all *legislative* records held by the General Assembly (the state Senate and House of Representatives and a stated number of legislative committees and commissions) are available.

**Does that mean I can see any and all records?** No. Although there is a presumption that all records are open, the law contains 30 categories of records that are exempt from disclosure, including records that, if disclosed, would threaten homeland security or a person's personal security, criminal investigative records, medical records, and certain personnel records. (*See list of exemptions below*)

**Does the open records law always apply?** No. The open records law does not apply to records that are either protected by a privilege (such as attorney-client or doctor-patient), or that fall under another state or federal law or a judicial order. If another law says that a record is public or not public, the other law applies.

**What kinds of records are covered by other laws?** Criminal and civil court records and voter registration records are made public by other laws. Police blotter and incident reports are made publicly available under the Criminal History Record Information Act. There also are laws protecting social service and medical records. These are just some examples.

**If a record is exempt from disclosure under the open records law, does that mean it can't be released?** No. The list of exemptions determines what records legally *may* be withheld, it does not say those records *must* be withheld. There is a provision giving agencies the discretion to release records if the public interest in disclosure outweighs any need for confidentiality. (And if another law or privilege doesn't apply.)

For example: The new law exempts the names of minors from disclosure. However, the public interest in knowing the names of students on high school honor rolls, graduation lists, football teams, etc. means most school districts should continue to release these names.

**What about the records of private companies doing government work?** The law provides access to public records in the possession of contractors performing "governmental functions" on behalf of a state or local agency, and which directly relate to that governmental function. Request these kinds of records from the government agency, not the contractor. This only applies to records related to the government work.

**What if a public record has some non-public information in it, like a Social Security number?** The law requires the record to be released, with the non-public information stricken out – "redacted."

**How can I request information from a local government or state agency?** You can make a request four ways: mail, fax, e-mail or in person. The request must be sufficiently "specific" to allow the public agency to identify what you are seeking.

**Is there a form I can use to use to obtain records?** Yes, a standard request form is available from the state Office of Open Records website at <http://openrecords.state.pa.us>. (Also printed on Page 7.) A local or commonwealth agency may use its own form, but it also must accept the Office of Open Records Request form if you want to use it. Legislative and judicial agencies may develop their own forms.

**Must I explain why I want the information?** No. The law prohibits a public body from requiring anyone “to disclose the purpose or motive in requesting access to records.” They may need to ask you questions, however, in order to understand exactly what records you are looking for and help fulfill your request.

**How long does an agency have to respond?** All agencies now have five business days to answer your request. Under certain circumstances — such as when legal review or redaction are necessary, or the records are stored in a remote spot, or when the request is extensive — an agency may take up to 30 additional days. But it still must respond to your request within five days, notifying you of the time extension.

**What if I don’t hear back from them within the time limit?** Then your request is “deemed denied,” and you may file an appeal. It is important that you put your request in writing, so you have documentation of when the request was made.

**How do I file an appeal?** If your request or part of your request is denied by a local or state agency (or “deemed denied” by lack of a timely response), you may appeal to the Office of Open Records, which will issue rules regarding the appeal process. You must file the appeal within 15 business days of the mailing date of the denial, and your appeal must explain why you believe the record you requested is a public record. Also address any grounds the agency provided for delaying or denying your request.

**Can a request be denied because the requester is not a citizen of Pennsylvania?** No. Any legal resident of the United States can request a record, including a person with a green card.

**Can a state agency or local agency charge me for copying records?** Yes. It may also collect from you the actual cost of postage if the records are to be mailed to you. However, the law states that the Office of Open Records will establish the fees for duplication. The OOR will have a fee structure set by the time the new law comes into effect.

**Can a state agency or local agency charge additional fees?** Generally, no. The law states that, “except as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency’s review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this act.” If a separate law authorizes an agency to charge a set amount for a certain type of record, the agency may charge no more than that amount.

**Can they make me pre-pay?** Agencies may require prepayment where fees are expected to exceed \$100.

**What about fees for obtaining a copy of a database?** In certain, very limited circumstances, agencies are permitted to charge fees based on the reasonable market value of records. This increased fee provision only applies to requests for “complex and extensive datasets,” such as geographic information systems (GIS) databases or integrated property assessment list databases. The increased fee provisions do not apply to media requesters or to nonprofit organizations conducting educational research.

**Are emails and tape recordings public record?** Yes. That does not mean there is wholesale release of e-mail records or tapes. It means that an email or tape, like any other record, goes through the same analysis to determine whether it is a public record. It’s not the format of the record that counts – it’s what kind of information it contains.

**Can a public body limit the number of requests that a citizen can make?** No. The law states that a state or local agency cannot limit “the number of records which may be requested or made available for inspection or duplication.” However, citizens should use good judgment in seeking records from the public body and not use this law to harass or overburden a public body from performing its job. Also, a public body can deny repeated requests for the same records by the same requester.

**Can I get information I’m looking for just the way I want it?** You should ask if the agency can accommodate any such requests you have — for instance, if it is just as easy to print a spreadsheet sorted by one specific field as another. But agencies are not required to “create” a public record if none exists or to “compile, maintain, format or organize” a record in a way in which it does not already do so. Example: You want to know the attendance records of each township supervisor at board meetings for the past year. The township does not have to create an attendance report for you, if it doesn’t already have one. However, since attendance must be noted on meeting minutes, it may provide you with copies of all the minutes for the year in question, so you may compile the information yourself.

**Can I ask for records in person?** Yes. However, if you wish to take advantage of the appeal process in case you are denied, the request must be in writing.

**Can I make a request by email?** Yes. The law requires public agencies to accept requests made by email.

**Can I get an electronic copy of a public record? Or a copy of a tape recording?** If the record already exists in the medium you request, the agency must make it available to you that way. Duplicating costs may apply. But if a record only exists as a paper file, for example, the agency is not required to scan it into a computer format for you. But you may always ask.

**What if I want a printout, not an electronic copy of a record?** If a record is maintained only in a computer, agencies *must* make you a paper copy if you request it that way. Paper is always an option.

### **What are some examples of public records available under the new law?**

- 911 time response logs
- Grant applications (not just the contracts reflecting funded grants)
- Contracts – The law establishes an online, searchable database for state contracts
- Agreements
- Agency decisions
- Financial records of all kinds.
- Aggregated data – Databases of information about broad groups or categories, where individuals cannot be identified
- Name, title, salary of public employees and officials
- Records reflecting a public employee’s demotion or discharge.
- Board packets, at the time they are presented to a quorum of the board before a meeting
- Community colleges are now covered agencies, and their records are presumed public.
- State-affiliated universities are now required to publicly disclose certain financial information, including the salaries of all officers and directors and salaries of the highest paid employees.
- The General Assembly is now included as an “agency,” and the law expressly identifies a number of legislative records that are public, including financial records, manuals and written policies, and financial audit reports.

### **What are some types of information that will NOT be available?**

- Social Security numbers
- Drivers license numbers
- Employee numbers
- Home, cellular or personal phone numbers
- Personal financial information
- Spouse’s name, marital status, beneficiary or dependent information
- Home addresses of law enforcement and judges
- Identity of confidential informants.
- Autopsy reports – except that name, cause and manner of death, which are public.
- Records that 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

### **What agencies are covered by the new open records law?**

There are four types of agencies identified: Commonwealth, local, legislative and judicial.

**What are commonwealth agencies?** All state agencies (such as the Department of Education) are included, and specifically the following:

- The Governor’s office
- Office of Attorney General
- Department of Auditor General
- Treasury Department
- Pennsylvania Higher Education Assistance Agency (and entities created by PHEAA)
- Pennsylvania Gaming Control Board
- Pennsylvania Game Commission
- Pennsylvania Fish and Boat Commission
- Pennsylvania Housing Finance Agency
- Pennsylvania Municipal Retirement Board
- State System of Higher Education
- Community colleges
- Pennsylvania Turnpike Commission
- Pennsylvania Public Utility Commission
- Pennsylvania Infrastructure Investment Authority
- State Public School Building Authority
- Pennsylvania Interscholastic Athletic Association
- Pennsylvania Educational Facilities Authority

And any other state organization established by law that performs or is intended to perform an essential governmental function

## What are local agencies?

These include:

- Political subdivisions (such as public school districts)
- Intermediate units
- Charter schools
- Cyber charter schools
- Public trade or vocational schools
- Local, intergovernmental, regional or municipal governments (such as counties, boroughs and townships)
- Any similar governmental entity

## What records can I get from commonwealth and local agencies?

The law presumes that all records held by all of these agencies are open, both for viewing and copying; the burden of proving that a record is non-public – or that an exemption applies – is on the agency denying access.

The presumption of access doesn't apply to records that are protected by a legal privilege (such as attorney-client, doctor-patient) or that are exempt from disclosure under another state or federal law.

There are also 30 categories of records that are exempt from disclosure in the new open records law.

## What are the 30 categories of exemptions?

Note that agencies may release these records in many circumstances, and that many of these exemptions do not apply to financial records or aggregated data. The burden of proving that a record is exempt is on the agency receiving the request for the record.

And remember that this is a list of what records a state or local agency *may* legally withhold. It is not a list of what they *must* withhold. Agency heads have the discretion to release records that are exempt if they feel it is in the public interest to do so, as long as disclosure isn't prohibited by another law or court order and as long as the record isn't protected by a legally recognized privilege.

### THE LAW EXEMPTS THE FOLLOWING TYPES OF RECORDS:

- 1a. Loss of funds:** If disclosed, would result in the loss of federal or state funds
- 1b. Personal security:** If disclosed, would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual
- 2. Public safety:** If disclosed, would be reasonably likely to jeopardize homeland security or public safety or preparedness
- 3. Infrastructure security:** If disclosed, would create a reasonable likelihood of endangering the safety or security of a building, public utility, infrastructure, or information storage system
- 4. Computer security:** If disclosed, would be reasonably likely to jeopardize computer security
- 5. Health records:** Medical, psychological and related records that would disclose individually identifiable health information
- 6a. Personal identification information,** including Social Security numbers, personal financial information, driver's license numbers, home, cellular or personal telephone numbers, personal e-mail addresses, employee numbers, other confidential personal identification numbers, a spouse's name, marital status, and beneficiary or dependent information
- 6b. Law enforcement/judicial security:** Home addresses of law enforcement personnel and judges
- 7. Certain personnel records** relating to public employees, including:
  - a. letters of references unless related to an appointment to fill a vacancy in an elected office or an appointed office requiring Senate confirmation;
  - b. performance ratings or reviews;
  - c. state civil service test results and local results if restricted by collective bargaining agreement or if applicant failed;
  - d. applications of those not hired;
  - e. workplace support services program information;
  - f. written criticisms of an employee;
  - g. grievance material;
  - h. information regarding discipline, demotion, or discharge contained in a personnel file. This subparagraph does not apply to the final action of an agency that results in demotion or discharge; and
  - i. academic transcripts.

**8. Collective bargaining:** Records relating to collective bargaining strategy or negotiations, except that final contracts and agreements and final awards and orders of arbitrators are public

**9. Drafts** of bills, resolutions, regulations, policies, management directives, and ordinances

**10. Records reflecting internal, predecisional deliberations** of agencies, including predecisional deliberations relating to a budget recommendation, legislative proposal, or proposed policy, including internal strategies.

This exemption does not apply to records reflecting an agency decision, records requesting state funding/grant money, or results of public opinion surveys or polls. In addition, records presented to a quorum of an agency for public deliberation at a meeting subject to the Sunshine Act (e.g., board packets) are public records, unless otherwise exempt under the Act

**11. Trade secrets** and confidential proprietary information

**12. Notes and working papers** used by a public official or employee solely for personal use

**13. Donations:** Records that would disclose the identity of an agency donor, unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency

**14. Unpublished academic materials**

**15. Academic transcripts and examination materials**

**16. Criminal investigative records.** This exemption does not apply to private criminal complaints or to information contained in a police blotter or in a traffic report (except for in-depth accident investigations)

**17. Non-criminal investigative records.** This exemption does not apply to fines levied by agencies, license revocations, settlement agreements, or similar agency actions

**18. 911 records,** except that time response logs are public, and agencies can disclose 911 recordings or transcripts if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure

**19. DNA and RNA records**

**20. Autopsy reports,** except that name, cause, and manner of death of a deceased individual are public

**21. Draft minutes** of an agency until the next meeting, and **minutes of an executive session**

**22. Real estate appraisals, environmental reviews, audits or evaluations** relating to an agency's proposed lease, acquisition, or disposal of real property. The exemption no longer applies once the decision to lease, acquire or dispose of the property is made

**23-24. Library circulation records and certain archived materials**

**25. Sensitive sites:** Records identifying the location of an archeological site or an endangered or threatened plant or animal species if not already publicly known

**26. Pre-award contract bids:** Proposals relating to agency procurement or disposal of supplies, services or construction prior to the award of the contract or the opening and rejection of all bids; financial information of a bidder or offeror. (Proposals are available after a bid is awarded or all bids are rejected.)

**27. Insurance:** Communications between an agency and its insurance carrier, administrative service organization, or risk management office. This exemption does not apply to contracts between agencies and these entities or to financial records relating to the provision of insurance

**28. Social services:** Records identifying individuals who apply for or receive social services or disclosing the social services received by an individual

**29. Constituent letters:** Correspondence between a person and a legislator that would identify a person requesting assistance or constituent services. This exemption does not apply to communications from lobbyists

**30. Identity of minors:** Records identifying the name, home address, or date of birth of a child 17 years of age or younger

### **What are legislative agencies?**

These include the state House of Representatives and Senate, the political party caucuses of the state House and Senate, and a number of specifically-listed commissions and entities:

- Capitol Preservation Committee
- Center for Rural Pennsylvania
- Joint Legislative Air and Water Pollution Control and Conservation Committee
- Joint State Government Commission
- Legislative Budget and Finance Committee
- Legislative Data Processing Committee
- Independent Regulatory Review Commission
- Legislative Reference Bureau
- Local Government Commission
- Pennsylvania Commission on Sentencing
- Legislative Reapportionment Commission
- Legislative Office of Research Liaison
- Legislative Audit Advisory Commission

### **What records can I get from legislative agencies?**

The open records law applies only to the legislative records of these agencies. Legislative records include:

- Financial records
- Bills or resolutions that have been introduced
- Fiscal notes
- Co-sponsorship memoranda
- Minutes of public hearings and public committee meetings
- Transcripts of public hearings, when available
- Executive nomination calendars
- Rules of a chamber
- Record of all recorded votes
- Administrative staff manuals and written policies
- Audit reports
- Final and annual reports required to be submitted to the General Assembly
- Legislative Budget and Finance Committee reports
- Daily Legislative Session Calendars and marked calendars
- Records reflecting an appointment of a legislative appointee
- Proposed regulations, final-form regulations and final-omitted regulations
- Results of public opinion surveys and polls

### **What are judicial agencies?**

These include any court, entity or office with Pennsylvania's unified judicial system, including the offices of magisterial district judges.

### **What records can I get from judicial agencies?**

The state judicial system and Constitution establish public access to court records and proceedings.

The open records law applies only to the financial records of judicial agencies, which include:

- Accounts, vouchers and contracts dealing with receiving or spending money or acquiring, using or disposing of services, supplies, materials, equipment or property.
- Salaries and other payments or expenses paid to public officials or employees, including their name and title
- Financial audit reports

### **Where can I find state contract information online?**

The law requires state, legislative and judicial agencies to file contracts of \$5,000 or more with the state Treasury Department for posting on the agency's Website: <http://contracts.patreasury.org/search.aspx>

### **Will other records be available online as well?**

Yes. Agencies across the state are moving in this direction and making many more records available online. The new open records law encourages agencies to post more public records online, by allowing them to respond to your request by showing you how to access it on their Website.

### **How do I reach the Office of Open Records?**

Office of Open Records  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225

Email: [openrecords@state.pa.us](mailto:openrecords@state.pa.us)  
Phone: 717-346-9903  
Website: <http://openrecords.state.pa.us>

**The complete text of the new open records law may be read and downloaded from the Pennsylvania Freedom of Information Coalition at [www.pafoic.org](http://www.pafoic.org)**

*This "Quick Guide" compiled by the Pennsylvania Freedom of Information Coalition from information prepared by the Pennsylvania Office of Open Records and the Pennsylvania Newspaper Association*

*Have a question about the open records (Right to Know) or open meetings (Sunshine Act) law? Get an answer online at the Pennsylvania Freedom of Information Coalition Open Government Forum*



# pennsylvania

OFFICE OF OPEN RECORDS

## STANDARD RIGHT-TO-KNOW REQUEST FORM

**DATE REQUESTED:**

**REQUEST SUBMITTED BY:**      E-MAIL      U.S. MAIL      FAX      IN-PERSON

**NAME OF REQUESTOR :** \_\_\_\_\_

**STREET ADDRESS :** \_\_\_\_\_

**CITY/STATE/COUNTY (Required):** \_\_\_\_\_

**TELEPHONE (Optional):** \_\_\_\_\_

**RECORDS REQUESTED:**

*\*Provide as much specific detail as possible so the agency can identify the information.*

**DO YOU WANT COPIES?** YES or NO

**DO YOU WANT TO INSPECT THE RECORDS?** YES or NO

**DO YOU WANT CERTIFIED COPIES OF RECORDS?** YES or NO

---

**RIGHT TO KNOW OFFICER:**

**DATE RECEIVED BY THE AGENCY:**

**AGENCY FIVE (5)-DAY RESPONSE DUE:**

*\*\*Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

# The Pennsylvania Freedom of Information Coalition

4075 Linglestown Road #212 • Harrisburg, PA 17112-1020  
[www.pafoic.org](http://www.pafoic.org)

## OUR CORE MISSION

The Pennsylvania Freedom of Information Coalition works to give all Pennsylvanians access to their federal, state and local governments, their records and their proceedings.

We believe that such access results in the most responsive, accountable and effective government, stimulating civic involvement and trust in government.

We seek to help all Pennsylvanians fully realize their rights and carry out their responsibilities as citizens in our democracy.

## OUR CORE WORK

**Education:** Through seminars and publications, we educate citizens, groups and government officials about the importance of open government to democracy and how they can use their rights to get public records.

**Law reform:** We monitor proposed state and federal laws, regulations and court decisions. We provide information to state officials and encourage discussion of open government improvements in Pennsylvania. To the extent allowed by our nonprofit status, we support reforms affecting public records.

**Legal support:** We provide legal resource material to citizens or groups who encounter difficulty in obtaining public records. In open government cases of state-wide importance, we help citizens obtain vigorous legal representation.

Pennsylvania's new Right to Know Law  
may be read online  
at [www.pafoic.org](http://www.pafoic.org).

Printable and PDF versions available  
for downloading.

Other resources available online from  
**Pennsylvania Freedom of Information Coalition:**

- The Pennsylvania Open Government Forum: Post your questions and comments to get quick help from the PaFOIC's team of open-records experts.
- Pennsylvania's Sunshine Act (Open Meetings), also available as printable download.
- Latest news on open government legislation and court cases.

# A QUICK GUIDE TO PENNSYLVANIA'S NEW OPEN RECORDS LAW

Effective January 1, 2009



Pennsylvania  
Freedom of Information Coalition

4075 Linglestown Rd. #312  
Harrisburg, PA 17112-1020

[www.pafoic.org](http://www.pafoic.org)