

RIGHT-TO-KNOW LAW

Effective December 29, 2002, the Office of Attorney General implemented the following policy and procedures which allow access and release of documents as required by Act 100 of 2002, also known as the Right-to-Know Law.

POLICY

I. General

- A. General rule. Unless otherwise provided by law, a public record shall be accessible for inspection and duplication by a requester in accordance with this Policy. A public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for access during the regular business hours of the OAG. Nothing in this Policy shall provide for access to a record which is not a public record.
- B. Written requests. A written request for access to records may be submitted in person, by mail, by facsimile or email. A written request shall be addressed to the Attorney General or the Director of Management Services and sent to the following address:

Office of Attorney General
Director, Management Services Division
14th Floor, Strawberry Square
Harrisburg, Pa 17120

A written request should identify or describe the records sought with sufficient specificity to enable the OAG to ascertain which records are being requested and shall include the name and address to which the OAG should address its response. A written request need not include any explanation of the requester's reason for requesting or intended use of the records.

- C. Electronic access. In addition to the requirements of Section I.A, the OAG may make its public records available through any publicly accessible electronic means. If access to a public record is routinely available from the OAG only by electronic means, the OAG shall provide access to inspect the public record at an office of the OAG.
- D. Creation of a public record. When responding to a request for access, the OAG shall not be required to create a public record which does not currently exist or to compile, maintain, format or organize a public record in a manner in which the OAG does not currently compile, maintain, format or organize the public record.
- E. Conversion of an electronic record to paper. If a public record is only maintained electronically or in other non-paper media, the OAG shall, upon request, duplicate the public record on paper when responding to a request for access in accordance with Act 100 of 2002.
- F. Retention of records. Nothing in this Policy is intended to

modify, rescind or supersede any record retention and disposition schedule established pursuant to law.

II. Definitions

The following words and phrases when used in this Policy shall have the meanings given to them in this Policy unless the context clearly indicates otherwise:

1. OAG. The Office of Attorney General.
2. Public record. Any account, voucher or contract dealing with the receipt or disbursement of funds by the OAG or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by the OAG fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by the OAG in the performance of its official duties, except those reports filed by the OAG pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act.
3. Record. Any document maintained by the OAG, in any form, whether public or not.
4. Requester. A person who is a resident of the Commonwealth and requests a record pursuant to Act 100 of 2002.
5. Response. Access to a record or the OAG's written notice granting, denying or partially granting and partially denying access to a record.

III. Access to Public Records

The OAG shall not deny a requester access to a public record due to the intended use of the public record by the requester.

IV. Redaction

If the OAG determines that a public record contains information which is subject to access as well as information which is not subject to access, the OAG's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public

record and cannot be separated, the OAG shall redact from the public record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The OAG shall not deny access to the public record if the information which is not subject to access is able to be redacted. Information which the OAG redacts in accordance with this section shall be deemed a denial under Section V of this Policy.

V. Response to Written Request for Access

- A. General rule. Upon receipt of a written request for access to a record, the OAG shall make a good faith effort to determine if the record requested is a public record and to respond as promptly as possible under the circumstances existing at the time of the request but shall not exceed ten business days from the date the written request is received by the Attorney General or the Director of Management Services. If the OAG fails to send the response within ten business days of receipt of the written request for access, the written request for access shall be deemed denied.
- B. Exception. Upon receipt of a written request for access, if the OAG determines that one of the following applies:
 - 1. the request for access requires redaction of a public record in accordance with Section IV of this Policy;
 - 2. the request for access requires the retrieval of a record stored in a remote location;
 - 3. a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
 - 4. a legal review is necessary to determine whether the record is a public record subject to access under Act 100 of 2002;
 - 5. the requester has not complied with the OAG's policies regarding access to public records; or
 - 6. the requester refuses to pay applicable fees authorized by Section VIII of this Policy,

the OAG shall send written notice to the requester within ten business days of the OAG's receipt of the request for access stating the reason that the OAG will not provide access within ten business days. If the stated reason is found in Section V.B.1-4 above, the notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided. If the reason is found in Section V.B.5 or V.B.6 above, the notice shall state how the requester has not complied or shall state that the requester has not paid the applicable fee. If the date that a response is expected to be provided is in excess of 30 days, following the ten business days allowed for in Section V.A, the request for access shall be deemed denied.

- C. Denial. If the OAG's response is a denial of a written request for

access, whether in whole or in part, a written response shall be issued and include:

1. A description of the record requested.
 2. 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 not a public record, the specific reasons for the agency's determination that the record is not a public record shall be included.
 3. The typed or printed name, title, business address, business telephone number and signature of the public official or public employee on whose authority the denial is issued.
 4. Date of the response.
 5. The procedure to appeal the denial of access under this Act.
- D. Certified copies. If the OAG's response grants a request for access, the OAG shall, upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees pursuant to Section VIII.A.3 of this Policy.

VI. Final Determination

- A. Filing of exceptions. If a written request for access is denied or deemed denied, the requester may file exceptions with the Attorney General within 15 business days of the mailing date of the OAG's response or within 15 days of a deemed denial. The exceptions shall state grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the OAG for delaying or denying the request.
- B. Determination. Unless the requester agrees otherwise, the Attorney General or the Director of Management Services shall make a final determination regarding the exceptions within 30 days of the mailing date of the exceptions. Prior to issuing the final determination regarding the exceptions, the Attorney General or the Director of Management Services may conduct a hearing. The determination shall be the final order of the OAG. If the Attorney General or the Director of Management Services determines that the OAG correctly denied the request for access, the Attorney General or the Director of Management Services shall provide a written explanation to the requester of the reason for the denial.

VII. Judicial Appeal

- A. Within 30 days of the mailing date of a final determination from the OAG affirming the denial of access, a requester may file a petition for review or other document as might be required by rule of court with the Commonwealth Court.
- B. The OAG shall be served notice of actions commenced in accordance with Section VII.A and shall have an opportunity to respond in accordance with applicable court rules.

- C. The record before a court shall consist of the request, the OAG's response, the requester's exceptions, if applicable, the hearing transcript, if any, and the OAG's final determination, if applicable.

VIII. Fees

The OAG shall establish a fee schedule (Attachment 1) for the duplication and delivery of a public record using the following guidelines.

1. Postage. Fees for postage may not exceed the actual cost of mailing.
2. Duplication. Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.
3. Certification. The OAG may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.
4. Conversion to paper. If a public record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the native media as provided by Section VIII.A.2 unless the requester specifically requests for the public record to be duplicated in the more expensive medium.
5. Enhanced electronic access. If the OAG offers enhanced electronic access to public records in addition to making the public records accessible for inspection and duplication by a requester as required by Act 100 of 2002, the OAG may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the public records accessible for inspection and duplication by a requester as required by Act 100 of 2002. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable and may not be established with the intent or effect of excluding persons from access to public records or duplicates thereof or of creating profit for the OAG.
6. Waiver of fees. The OAG may waive the fees for duplication of a public record, including, but not limited to, when:
 - a. the requester duplicates the public record; or

- b. the OAG deems it is in the public interest to do so.
- 7. Limitations. Except as otherwise provided by statute, no other fees shall be imposed unless the OAG necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for the OAG's review of a record to determine whether the record is a public record subject to access in accordance with Act 100 of 2002.
- 8. Prepayment. Prior to granting a request for access in accordance with Act 100 of 2002, the OAG may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100.

IX. Confidentiality

If the OAG receives a request for a record that is subject to a confidentiality agreement executed before the effective date of Act 100 of 2002, the law in effect at the time the agreement was executed, including judicial interpretation of the law, shall govern access to the record, even if the record is a public record unless all parties to the confidentiality agreement agree in writing to be governed by Act 100 of 2002.

PROCEDURES

General

- A. Any OAG office which receives a "Right-to-Know" request shall immediately forward the original copy of the request to the Director of Management Services. If the request is received electronically, the email shall be forwarded to the Director of Management Services.
- B. A copy of the request shall also be forwarded to the appropriate Section Chief/Executive Deputy Attorney General who shall immediately determine the availability of the record requested, determine if the record is a "public record" and transmit same to the Director of Management Services.
- C. The Director of Management Services shall make the final determination on the release of the record after the appropriate consultation of the Section Chief/Executive Deputy Attorney General, and, if necessary, the Review and Advice Section.
- D. The Director of Management Services shall issue the response, determine the costs to be collected, if any, and coordinate the release of the record deemed to be a public record to the requester in accordance with this Policy.

This amended version replaces in its entirety Administrative Policy 2.14, dated July 17, 1998.

RIGHT-TO-KNOW FEE SCHEDULE
EFFECTIVE DECEMBER 29, 2002

POSTAGE - Postage will be charged at the actual cost of mailing.

DUPLICATION - The cost for duplication shall be 7.5 cents per page.

CERTIFICATION - There is no charge for certification.

CONVERSION TO PAPER - The cost for conversion to paper is 5 cents per page.