



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 2524

PRINTERS NO. 3235

PRIME SPONSOR: Schmitt

COST / (SAVINGS)

FUND	FY 2021/22	FY 2022/23
General Fund	\$0	See "Fiscal Impact"
Political Subdivision Funds	\$0	See "Fiscal Impact"

SUMMARY: Amends the Right to Know Law (RTKL) to address various provisions, including commercial requests, limits inmate requests, adds exceptions to public records, vexatious requesters of local agencies, retention of records, appeals and fees. This legislation would take effect in 30 days.

ANALYSIS: This legislation amends the Right to Know Law (RTKL) as follows:

Open-Records Officer: Commonwealth and local agencies are required to register their open-records officer with the Office of Open Records (Office).

Additionally, the contact information required to be posted at each agency and on the agency's Internet website for the open-records officer must now include the name, address, telephone number, fax number and email address.

Commercial Requests: For commercial requests, an agency can require a requester to certify in writing whether the request is for a commercial purpose. This certification must be submitted in a manner approved by the Office. A requester that submits a false written statement would be subject to penalties under unsworn falsification to authorities.

Agency Possession: When a volunteer organization contracts with a Commonwealth or local agency to provide services and the governmental function is not exempt under the RTKL, then the records are considered a public record. This includes, but is not limited to, the following volunteer organizations:

- A volunteer ambulance service
- A volunteer fire company
- A volunteer rescue company
- A volunteer water rescue company
- A volunteer organization that provides hazardous materials response services
- A volunteer organization that provides emergency medical services

Retention of Records: The RTKL does not impede an agency's established record retention schedule. However, the legislation adds that once a request for records has been submitted, an agency cannot knowingly dispose of any potentially responsive record until the request has been responded to and any related appeals exhausted. A court can impose a civil penalty of no more than \$2,500 on an agency or a public official for disposing of any possible responsive record in bad faith.

Inmate Access: An inmate is not considered a requester for purposes of the RTKL. An agency is not prohibited from voluntarily permitting an inmate to have access to records not listed below. Additionally, an agency is not prevented from complying with a lawful subpoena or court order. An agency is required to provide an inmate with copies of the below-listed records as they pertain directly to the inmate or the inmate's case if the disclosure of the record will not diminish the safety or security of any person or correctional facility and if no other policies and procedures are in place for the inmate to obtain the requested information:

- Public records related to the criminal commitment of the inmate.
- Institutional housing information.
- The inmate's financial, work, educational and disciplinary records.
- Disciplinary, housing, and other policies adopted by the correctional institution or the Department of Corrections (DOC).
- A record relating to any Federal or State benefit received by the inmate or for which the inmate may be eligible
- The inmate's tax or voting records.
- Records relating to any license issued to the inmate by a Commonwealth or local agency.

Exceptions for Public Records: The following listed exemptions to the RTKL have been modified:

- Under personal identifiable information, in addition to a spouse, an immediate family member's information has been added. This section also now includes the number, names and ages of an employee's dependents also.
- A current, past or prospective applicant for employment or for legislative or gubernatorial appointment.
- Regarding draft legislation or policy or management directives prepared by or for an agency, if a draft is presented to a quorum for deliberation in accordance with open meetings laws, at a public meeting, regardless of whether a vote occurs or is scheduled, then the exemption does not apply. The same applies to the internal, predecisional deliberations of an agency, its members, employees, or officials or predecisional deliberations between agencies, etc.
- Records that would disclose the identity of, or personal financial information relating to, an individual who lawfully makes a donation to or for the benefit of an agency. The definition for "personal financial information" is amended to include other financial institution account information; forms required to be filed by a taxpayer with a Federal, state, or local taxing authority; employee benefit election information; individual employee contributions to retirement plans and investment options; individual employee contributions to health care benefits and other benefits; individual employee contribution

to charitable organizations.

- Regarding records of an agency relating to or resulting in a criminal investigation – the legislation adds that the exception does not apply to records created more than 50 years prior to the request unless the agency can demonstrate actual harm to an ongoing investigation if the records are released or establish any requirement that an agency retain a record for any period of time not otherwise required for retention by law. Additionally, police blotter information, in whatever form it exists, is public.
- Regarding records of an agency relating to a noncriminal investigation – the legislation adds that the exception does not apply to records created more than 25 years prior to the request unless the agency can demonstrate actual harm to an ongoing investigation if the records are released or establish any requirement that an agency retain a record for any period of time not otherwise required for retention by law.
- Emergency dispatches as outlined.
 - A definition for “time response log,” a log created, received, maintained, or retained by a public safety answering point (PSAP), as defined in Title 35, containing certain information, has been added to the RTKL. A time response log is a public record.
- An agency’s financial institution account numbers, routing numbers, credit card numbers, PIN numbers, and passwords.

Certain financial records are not exempt, but can be redacted, including the following additional information: personal financial information, a record or information related to social services, a record related to a minor, and an agency’s financial institution information.

Agency Response - Extension of Time Notice: The RTKL requires a written notice to be sent to a requestor within five business days from the date the written request is received by the open-records officer for an agency. The legislation clarifies that the request for access is deemed denied if the agency fails to send a response within 30 days following the five business days unless the requestor has agreed in writing to an additional extension beyond 30 days.

Vexatious Requesters: A section is added to allow a local agency to petition the Office for relief from alleged vexatious requestors. For relief, a local agency must demonstrate clear and convincing evidence that a requestor’s sole intentions are to annoy or harass the local agency by filing a request or requests. The petition must:

- Be submitted under penalty of unsworn falsification to authorities
- Be provided to the Office and the alleged vexatious requester
- Detail the conduct that the local agency alleges is vexatious, including as appropriate:
 - Number of requests filed
 - Total number of pending requests
 - Scope of requests
 - Nature, content, language or subject matter of other oral and written communications to the local agency
 - Conduct that is allegedly placing an unreasonable burden on the local agency
 - Conduct that is allegedly intended to harass the local agency

- Any other relevant information, including relief sought or granted to other agencies against the same individual.

A local agency may not petition the Office for relief from an individual employed by or who contracts with a newspaper or magazine of general circulation, weekly publication, press association or radio or television station who submits a request for the purpose of news gathering or dissemination in a newspaper, periodical, book, digital publication, or radio or television broadcast.

Upon the filing of a petition for relief from a vexatious requestor, all other proceedings and deadlines under the RTKL are stayed pending resolution of the petition by the Office and the stay will apply to any pending or new requests by the alleged vexatious requestor.

Upon receipt of a petition, the executive director of the Office or a designee must:

- Notify the alleged vexatious requestor within five (5) business days that they can file a preliminary response within 10 business days.
- Review the petition and determine whether further proceedings are warranted within 30 calendar days after receipt. The following applies:
 - Written denial of the petition, including an explanation of the reasons for the denial if the executive director or designee determines that further proceedings are not warranted.
 - Establish a briefing schedule if it is determined that further proceedings are warranted to provide a fair opportunity for the alleged vexatious requestor to respond to the petition. Testimony, evidence, and documents that the executive director or designee believes to be reasonably probative (corroborative) and relevant are permitted to be admitted into evidence. The executive director or a designee is allowed to limit the nature and extent of evidence if found to be cumulative.
- The option for the parties to participate in mediation of up to 30 calendar days, which may be extended with the agreement of both parties, conducted by the Office. Any other proceedings are on hold during mediation.

Within 90 days of its filing, the executive director of the Office or the designee is required to issue a final opinion either granting or denying the petition. If granted, then relief is to be proportionate to the offending conduct, including an order that the local agency need not comply with future requests from the vexatious requestor for a specified time period, but not to exceed one year for the first instance. The Office may also request the Commonwealth Court impose a penalty commensurate with the burden placed on the local agency due to the vexatious conduct. The final opinion must be posted on the Office's public website. Finally, any aggrieved party can appeal a decision to the Commonwealth Court within 15 calendar days.

Appeal of Agency Determination: If a RTKL request is denied, a requester can file an appeal within 30 days of the postmark or email date of the agency's response, or 30 days of the deemed

denial, whichever comes first. This timeframe is increased from 15 days in current law. The appeal must provide a succinct statement of the grounds for which the appeal is based and include the text of the original request, the text of the agency denial, and any other information the requester believes to be relevant.

The Office is required to provide a form on its public website that can be used by the requester to file an appeal. The form can be used to file an appeal with legislative and judicial agencies. If a requester fails to include necessary information, the Office can order the information to be provided.

The final determination of an appeal is to be mailed to the requester and the agency within 30 days of receipt of the appeal. Language has been added to allow an appeals officer to extend the deadline up to 15 days by providing notice to both parties. Additionally, if a hearing is ordered, an appeals office can extend the deadline up to 90 additional days. If an in-camera review is ordered, then the deadline can be extended up to 120 additional days. If the final determination or extensions are not issued by the Office, agency, or judicial appeals officer, then the appeal is deemed denied.

The Office has exclusive jurisdiction over all appeals filed against Commonwealth and local agencies. Exceptions to this include the Attorney General, State Treasurer, and Auditor General, which can each designate an appeals officer to hear agency appeals. To the extent an appeal involves multiple issues, one of which relates to access to criminal investigative records in possession of a local agency, the Office will have jurisdiction over all other issues of the appeal. If an appeals officer does not have jurisdiction but another appeals officer does, then the appeal is to be transferred to the appeals officer with jurisdiction. If the appeal was timely filed with the original appeals officer, then it is considered timely filed upon the transfer, but response times or deadlines are to be considered from the date of the transfer.

In addition to the duties currently in the RTKL for an appeals officer, the legislation adds that an appeals officer can conduct an in-camera review in addition to holding a hearing. The decision to conduct an in-camera review is not appealable. The legislation removes the requirements that an appeals officer consult with agency counsel as appropriate. Finally, for a local agency or an agency for which the Office of Open Records designates an appeals officer the appeals officer must provide to the Office a copy of all final determinations issued within seven (7) days of issuance.

If a procedural defect would otherwise cause an appeal to be dismissed, the appeals officer is permitted, with the agreement of the parties, to waive the defect and proceed to consider the case on the merits.

The Office can request that a Commonwealth agency or a local agency submit a record and a privilege or exemption log for the purpose of conducting an in-camera review to determine if the record is a public record.

Court Costs and Attorney Fees, Civil Penalty: This legislation removes the condition clause to be able to award reasonable attorney fees and costs of litigation which had read: *if a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied.*

Civil penalties are increased from \$1,500 to \$2,500 if an agency denies access to a public record in bad faith.

Additionally, a court is permitted to impose a civil penalty of no more than \$500 per day if an agency or public official fails to comply with an order.

A court may impose a civil penalty of not more than \$2,500 if an agency or public official disposes of any potentially responsive record in bad faith.

Fee Limitations: For records to be used for a commercial purpose, an agency is permitted to charge a requester an additional standard fee for the search, retrieval, review, redaction, and duplication of the records. The fees are to be calculated at no more than the hourly wage of the lowest-paid public employee of the agency who is capable of searching, retrieving, redacting, or duplicating the information necessary to comply with the request. Prior to granting a commercial request, the agency must provide the requester, if requested, an estimate of the fees to be incurred by the agency in fulfilling the request. Exceptions where this cannot be applied include a request subject to fees for complex and extensive data sets, fees established in PA laws or regulations not subject to the RTKL, and a request from an attorney on behalf of a client if records are not obtained for the purpose of selling, reselling or solicitation by the attorney or the client or used by the client for a commercial purpose.

An agency and a requester are permitted to enter into a contract, memorandum of understanding (MOU) or other agreement that provides an alternative fee arrangement to fees. Such an agreement must be public. Finally, a fee charged by a local agency or an agency for which the Office of Open Records designates an appeals officer may be appealed to the Office.

Office of Open Records: The Office is required to provide an annual training course to agencies, public officials, and public employees and regional and online training courses throughout the year to local agencies, public officials, and public employees.

Compensation for staffing and attorneys is to be set by the Executive Director of the Office, and not the board as is currently written.

The Department of Community and Economic Development (DCED) is required to provide payroll, leave and benefits, budget, information technology (IT) and administrative support, and any other support necessary for the operation of the Office, to the Office.

The Office must abstain from public comment about a pending proceeding before it. Employees of the Office are not prohibited from making public statements in the course of official duties, from issuing written advisory opinions, from making general comments on the RTKL that are not related to a specific pending proceeding before the Office, or from explaining the procedures of the Office.

Relation to Other Laws: If records are expressly made public under any Federal law, the public records exceptions do not apply.

FISCAL IMPACT: According to the Office of Open Records, additional costs would depend on the number of vexatious requester appeals. The remainder of this legislation will have no adverse fiscal impact on Commonwealth agencies or political subdivisions.

PREPARED BY: Tim Rodrigo
House Appropriations Committee (R)

DATE: June 13, 2022

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.