

Responding to Requests of Public Record: Under the Right-to-Know Law

The Pennsylvania Right-to-Know Law (“RTKL”) governs public access to records maintained by governmental agencies, including political subdivisions. In 2008, amendments to the RTKL were adopted, significantly changing the way requests for records are perceived and processed. Under the amended RTKL, it is presumed that all records in the possession of an agency are public records, and it is the burden of the agency to establish why a record should not be released. This is in direct contrast to the prior version of the RTKL, where the burden was placed on the person requesting records to show why the records were public records.

Now that the burden has been placed on governmental agencies, responding to requests for records under the RTKL has become more complex. Before releasing any records, the governmental agency must determine whether the record requested is exempt from disclosure and therefore not a public record. Although the RTKL is favorable to public access, it sets forth a list of thirty categories of records that are not considered public. In addition to the RTKL, governmental agencies must consider State and federal laws that may prohibit the disclosure of the records requested.

Determining how to respond to a RTKL request can be complicated. Below are a few considerations to for governmental agencies to keep in mind when analyzing requests for records.

You can request an extension. A governmental agency has five business days to respond to a request for records. However, the RTKL permits a governmental agency to have an additional thirty days to respond to the request in limited circumstances, such as the record requested is stored in a remote location; a legal review is necessary to determine

whether the requested record is a public record; or a response cannot be timely issued due to staffing limitations. In order to obtain an extension, however, a written notice of the extension must be sent to the requester within five business days of the date of the request.

Record non-existence is a valid reason for denial. Quite often governmental agencies receive requests for records that do not exist. The RTKL does not require a governmental agency to create a record in response to a request. Therefore, an agency can deny a RTKL request if the record requested does not exist.

Privileged information is not subject to access. Privileged information, such as confidential communications between a governmental agency and its solicitor made for the purpose of obtaining or providing legal advice, may be redacted from records. Under the RTKL, a record protected by a privilege is not a public record.

Although the RTKL largely favors access to public records, care should be taken when determining how to respond to a request so that the release of exempt information is avoided. If a governmental agency has any questions about the public nature of records requested, it should consult its solicitor.

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As the active municipal solicitor, Emily has extensive experience in all facets of local government, including zoning and land use issues, property maintenance issues and demolition proceedings. She also has considerable experience with assisting clients with review-

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