



pennsylvania
OFFICE OF OPEN RECORDS

Agency Open Records Officer Guidebook

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CAUTION:

This guide is designed for ease of reference and provides a general overview of the Right-to-Know Law (RTKL) process. It is not exhaustive and does not govern or address every situation surrounding a RTKL request. Specific situations may require additional legal research and fact finding. The Office of Open Records (OOR) strongly recommends that an Agency Open Records Officer (AORO) seek the advice of agency counsel for questions concerning the application of the RTKL to a specific request or record.

INTRODUCTION

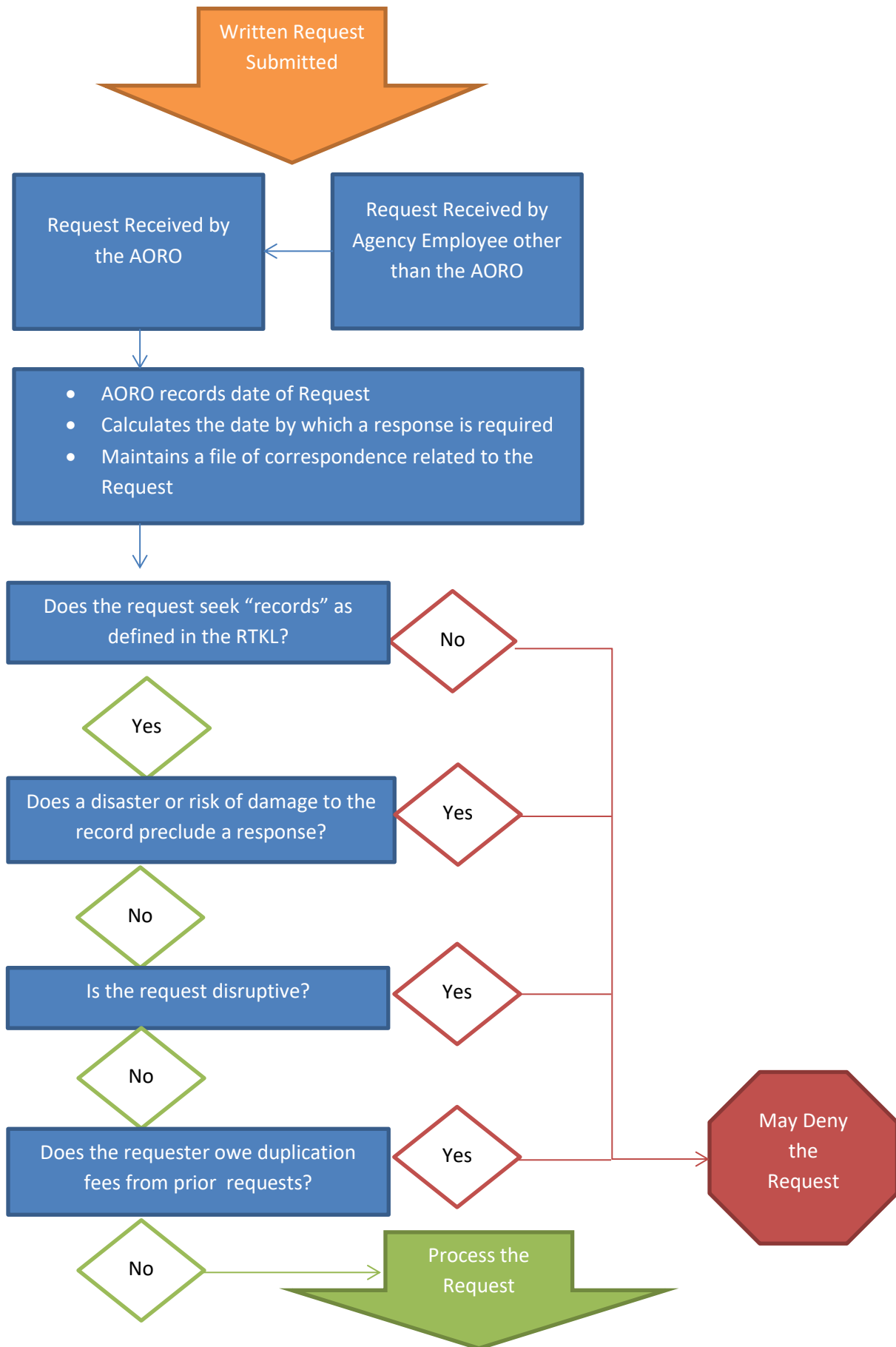
The RTKL is designed to ensure that citizens have access to the records of their government. 65 P.S. §§ 67.101, *et seq.* In the words of the Supreme Court, it is “designed to maximize access to public records.” If a government agency is well-prepared to handle requests under this law, the law should instill confidence, not fear, in public officials. An AORO is on the frontline in assuring timely and efficient access of citizens to information of their government’s activities. Courts have repeatedly highlighted that the “overriding legislative intent [of the RTKL is] the transparency of government and speedy resolution of requests.” The RTKL is remedial legislation that must be interpreted to maximize access. An AORO serves several statutorily mandated ministerial and administrative functions that constitute an action of the agency including ensuring a timely response to record requests.

The procedures set forth in this guidebook attempt to outline the duties of an AORO and provide a framework within which an agency can ensure prompt, legally sufficient responses to requesters while ensuring that third parties are provided notice of pending requests when appropriate and outlines the appeal process of an agency final response to the OOR.

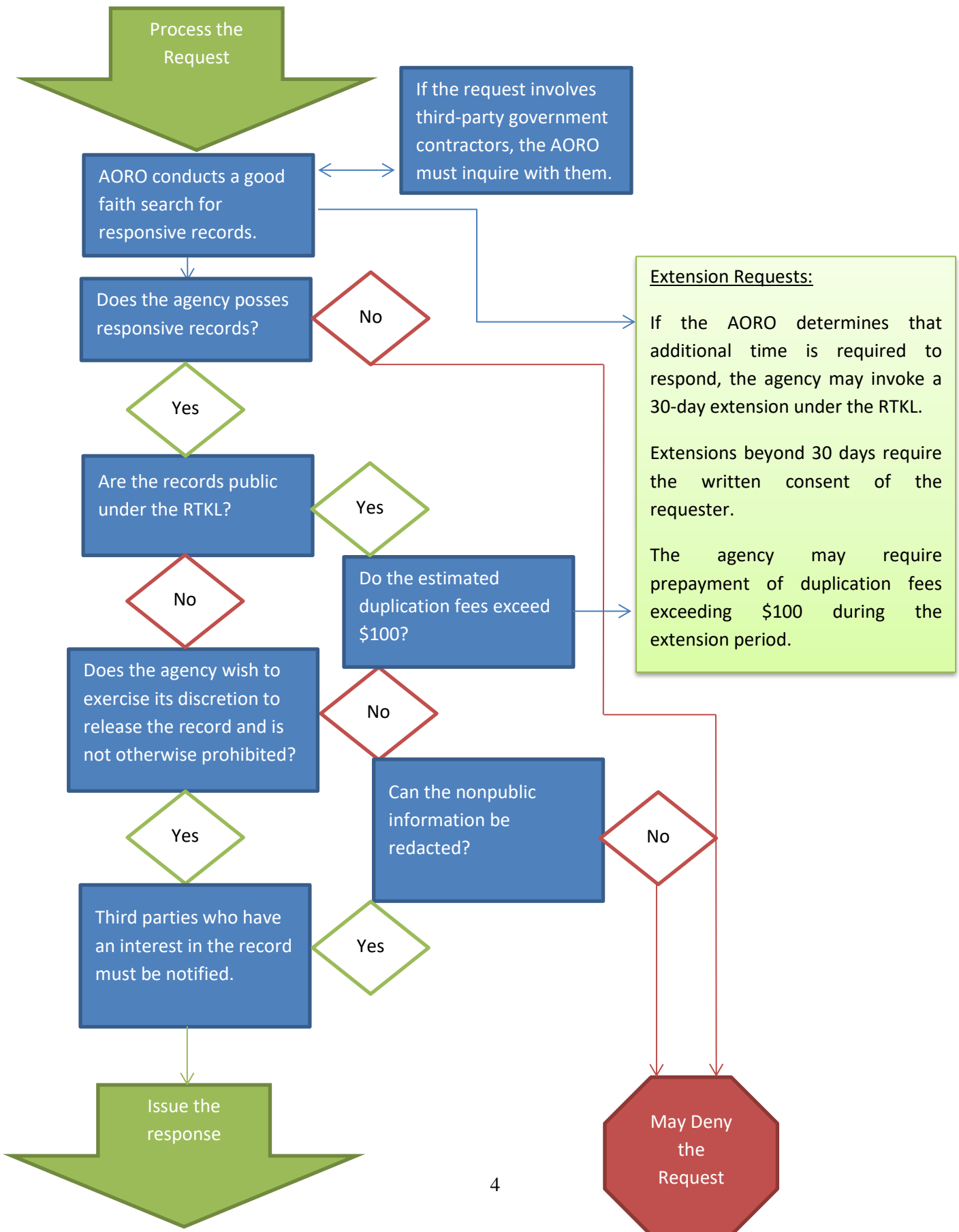
FLOWCHARTS

The following three pages include flowcharts designed to give an AORO an overview of the steps involved in receiving a RTKL request, processing a RTKL request, and responding to a RTKL request. Please note that, out of necessity, the flowcharts are highly simplified. The remainder of this AORO Guidebook goes into much greater detail.

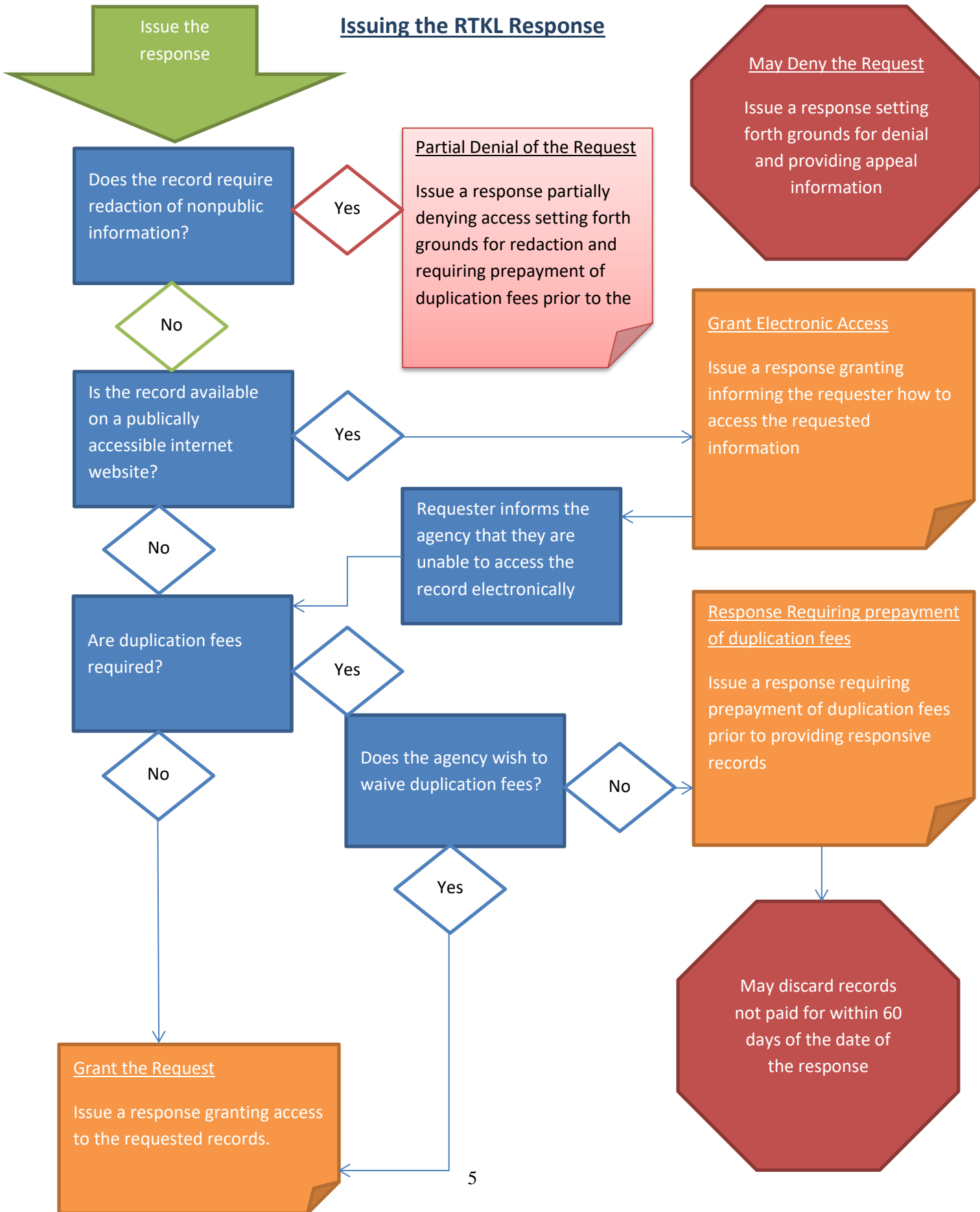
Receiving a RTKL Request



Processing a RTKL Request



Issuing the RTKL Response



I. Duties of AORO

A. General Duties

Under the RTKL, an agency is required to designate an official or employee to act as the AORO.¹ The duties of the AORO are specifically described in the RTKL.² The AORO is also assigned administrative duties to ensure compliance with record-keeping requirements under the RTKL. The RTKL requires that the AORO perform specific functions,³ including:

1. Receiving requests submitted to the agency;
2. Directing requests to other appropriate persons within the agency or to the appropriate persons in another agency;
3. Tracking the agency's progress in responding to requests; and
4. Issuing interim and final responses within the time frames mandated by the RTKL.

B. Liability of the AORO and the Agency

Both the agency and AORO are immune from civil or criminal damages or penalties for compliance with the RTKL or records retention and disposition schedules.⁴ However, an agency can be subject to attorney fees, court costs and other penalties for interpreting the RTKL in an unreasonable manner or otherwise acting in bad faith.⁵

C. AORO Administrative Duties

1. *Request Tracking Sheet*.⁶ The AORO should maintain a Request Tracking Sheet keeping a sequential record of all requests received. ([Exhibit 1](#)) The AORO should consider making the information available to the public on the agency's website. The information recorded on the Request Tracking Sheet ensures that requests received by the agency are responded to in a timely

¹ 65 P.S. § 67.502(a) (establishing the position of agency open records officer).

² 65 P.S. § 67.502(b) (enumerating for the functions of an agency open records officer).

³ 65 P.S. § 67.502.

⁴ 65 P.S. § 67.1306.

⁵ 65 P.S. §§ 67.1304, 67.1305.

⁶ 65 P.S. § 67.502(b)(1) ("The open records officer shall ... track the agency's progress in responding to requests").

manner and the public is informed of the agency's compliance with the requirements of the RTKL.

2. *Maintaining the Request File.* The AORO must maintain a file of all requests to the agency.
3. *Maintain the agency Open Records Request Policy.*⁷ The AORO should ensure that the agency's RTKL policy contains accurate AORO contact information and reflects current agency practices. The RTKL prohibits an agency from imposing certain restrictions in a RTKL policy:
 - a. The policy cannot limit the number of records that can be requested or made available for inspection or duplication.⁸
 - b. The policy cannot require the requester to disclose the purpose or motive in requesting access to records.⁹
4. *Maintain information on the agency website.* Information required to be posted on the agency's website, if the agency has a website, and monitored by the AORO includes:¹⁰
 - a. The contact information for the AORO;¹¹
 - b. The contact information for the OOR;¹²
 - c. A form to file a request;¹³ and
 - d. Agency RTKL regulations, policies and procedures.¹⁴

⁷ 65 P.S. § 67.504(a) (“An agency may promulgate regulations and policies necessary for the agency to implement [the RTKL]...”).

⁸ 65 P.S. § 67.1308(1) (prohibiting an RTKL policy from limiting the number of records that can be requested).

⁹ 65 P.S. § 67.1308(2) (prohibiting an RTKL policy from requiring a requester to disclose the motive in requesting access to records).

¹⁰ 65 P.S. § 67.504(b).

¹¹ 65 P.S. § 67.504(b)(1),

¹² 65 P.S. § 67.504(b)(2).

¹³ 65 P.S. § 67.504(b)(3).

¹⁴ 65 P.S. § 67.504(b)(4).

5. *Ensuring coverage of AORO duties.* In order to ensure that the agency's AORO duties are covered during a period when the AORO is unavailable, the AORO should designate an Interim AORO to monitor requests, and issue responses.
6. *Updating AORO contact information with the OOR.* When an agency appoints a new AORO or if the contact information of the AORO has changed, the agency should alert the OOR to changes in information. The agency may utilize the [AORO Information Update Form](#).

II. Receiving the Request

A. Generally

The agency must accept RTK requests by mail, e-mail, facsimile and hand delivery. When a request is received by the agency, the AORO must perform specific tasks required by statute and to ensure that the request is appropriately processed and responded to in a timely manner.

B. Requests Received by Other Agency Employees

The request response period only begins when a request is received by the AORO.¹⁵ However, if a request is received by another agency employee, the employee must forward the request to the AORO as soon as practical.¹⁶

C. Only Written Requests Require a Response

The AORO must determine whether correspondence is a written request for records requiring a response under the RTKL.¹⁷ An agency always has the discretion to respond and release records even if not required to do so under the RTKL.

1. *Requirements of a valid RTKL request.* In order to be an official request for records under the RTKL:

¹⁵ 65 P.S. § 67.901 (providing for the calculation of the response period beginning with the date a request is received by an AORO); *Commonwealth Office of the Governor v. Donahue*, 98 A.3d 1223, 1238 (Pa. 2014) (“[A]gencies must respond to RTKL record requests within five business days after the agencies’ respective open-records officer first receives the request. The five business day period plainly begins when the open-records officer receives a request.”).

¹⁶ 65 P.S. § 67.703 (“Employees of an agency shall be directed to forward requests for records to the open-records officer); *Pa. Gaming Control Board v. Office of Open Records*, 103 A.3d 1276, 1286-87(Pa. 2014) (noting that “agencies are independently responsible for determining how to implement the provision requiring a direction that employees forward such records requests to the open-records officer”).

¹⁷ 65 P.S. § 67.702 (“If the requester wishes to pursue the relief and remedies provided for in this act, the request for access to records must be a written request”).

- a. The request must be addressed to the AORO.¹⁸
 - b. The request must be from a valid requester.¹⁹
 - c. The request must be in writing.²⁰
 - d. The request must seek records²¹ and must identify the records sought with sufficient specificity to enable the agency to respond.²²
2. *Communications where agency has discretion to respond.* Examples of communications where discretion can be exercised:
- a. A verbal request.²³
 - b. An anonymous request.²⁴
 - c. An insufficiently specific request.

¹⁸ 65 P.S. § 67.703 (“A written request must be addressed to the open-records officer designated pursuant to section 502.”); *Pa. Gaming Control Board v. Office of Open Records*, 103 A.3d 1276, 1286-87(Pa. 2014) (holding that a request must be addressed to an agency’s open records officer to trigger requirements and procedures of the RTKL).

¹⁹ 65 P.S. § 67.102 (defining “requester” as “a person that is a legal resident of the United States and requests a record pursuant to this act[;] [t]he term includes an agency”).

²⁰ 65 P.S. § 67.702 (“Agencies *may* fulfill verbal ... requests for access to records under [the RTKL]...”)

²¹ Under the RTKL, the term “record” is defined to include:

Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency that is created, received or retained pursuant to the law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

65 P.S. § 67.102 (defining “record”); *Gingrich v. Pennsylvania Game Commission*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *13 (Pa. Commw. Ct. Jan. 12, 2012) (“[H]ow [can] any request that seeks information ... not [be] one that seeks records[?]”)

²² 65 P.S. § 67.703 (“A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested...”).

²³ 65 P.S. § 67.702.

²⁴ *Concerned Citizens of West Easton Borough v. West Easton Borough*, OOR Dkt. AP 2013-0246, 2013 PA O.O.R.D. LEXIS 131 (holding that an agency may exercise its discretion to respond to anonymous requests).

- d. Questions.²⁵
 - e. Narratives.²⁶
 - f. Requests for legal research.²⁷
3. *Intent of the requester is not considered.*²⁸ The agency cannot consider the intent of a requester when responding to a request and a requester is not required to explain the requester’s reasons for requesting or the intended use of the records unless otherwise required by law.

D. Denying a Request Prior to Processing

- 1. *Disasters or potential damage to the requested records.*
 - a. Disasters.²⁹ The agency may deny a requester access to records when timely access is not possible due to fire, flood or other disaster.
 - b. Access may cause damage to certain records.³⁰ The agency may deny access to historical, ancient or rare documents, records, archives and manuscripts when access may cause physical damage or irreparable harm to the record.
 - c. The contents of the records must be made available.³¹ To the extent possible, the requester must be provided access to the contents of the record even if the record is physically unavailable.

²⁵ See *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 (Pa. Commw. Ct. Jan. 12, 2012) (noting that the portion of a request “set forth as a question” did not “trigger a response”).

²⁶ *Neiman v. Hatfield Township Police Dep’t*, OOR Dkt. AP 2012-0935, 2012 PA O.O.R.D. LEXIS ___ (holding that a narrative describing events did not seek records).

²⁷ *Wolf v. Philadelphia Gas Works*, OOR Dkt. AP 2013-1176, 2013 PA O.O.R.D. LEXIS 639 (“the OOR has repeatedly held that an agency cannot be required to perform legal research for a requester”).

²⁸ 65 P.S. § 67.703 (“A written request need not include any explanation of the requester’s reason for requesting or intended use of the records unless otherwise required by law”).

²⁹ 65 P.S. § 67.506(b)(1)(i) (providing for the denial of a request due to a disaster); *Summers v. Scott Township*, OOR Dkt. AP 2011-1363, 2011 PA O.O.R.D. LEXIS ___ (holding that the an agency properly denied access to records where the agency’s building was damaged during a declared disaster emergency).

³⁰ 65 P.S. § 67.506(b)(1)(ii) (providing for denial of access to certain records where there is a risk of damage or irreparable harm to the record).

³¹ 65 P.S. § 67.506(b)(2) (requiring an agency to make the contents of a record available to a requester even if the record is not physically available).

2. *Disruptive requests.*³² The agency may deny a request for records if the requester has made repeated requests for the same record and the repeated requests have placed an unreasonable burden on the agency.
 - a. The request must be repeated. A request for a record is repeated if it seeks the same records more than twice.³³ A request may be repeated even if the request is phrased differently.³⁴
 - b. The repeated request must place an unreasonable burden on the agency.³⁵ The agency must substantiate that it has been unreasonably burdened by repeatedly responding to substantively similar requests.
3. *Outstanding duplication fees.* The agency may refuse to process a request where the requester failed to pay duplication fees for records provided in response to a prior request.³⁶

E. Logging the Request

When the AORO receives a written request for records the AORO must do all of the following:

1. *Stamp the date the AORO receives the request.*³⁷ The request must be marked with the stamp designated for Right-to-Know requests the date that they are received by the AORO.

³² 65 P.S. § 67.506(a) (providing for the agency’s denial of access for disruptive requests).

³³ 65 P.S. § 67.506(a)(1) (“An agency may deny a requester access to a record if the requester has made *repeated requests* for that same record...”) (emphasis added); *see also Borough of W. Easton v. Mezzacappa*, 74 A.3d 417, 419-20 (Pa. Commw. Ct. 2013).

³⁴ *See Dougher v. Scranton Sch. Dist.*, OOR Dkt. AP 2009-0798, 2009 PA O.O.R.D. LEXIS 318 (“Slight differences in phraseology do not preclude application of [Section 506(a)]”).

³⁵ *See, e.g., Dougher v. Scranton Sch. Dist.*, OOR Dkt. AP 2009-0798, 2009 PA O.O.R.D. LEXIS 318 (holding that 11 requests for identical records on the same day placed an unreasonable burden on the agency); *Mollick v. Worchester Township*, OOR Dkt. AP 2010-0863R (involving evidence of excessive legal fees in responding to repeated requests); *Dougher v. Scranton*, OOR Dkt. 2009-0798, 2009 Pa. O.O.R.D. LEXIS 318 (holding that where the agency has already substantively responded to a repeat request, recurring requests for the same information place an unreasonable burden on the agency).

³⁶ 65 P.S. § 67.901 (“All applicable fees shall be paid in order to receive access to the record requested”); *see DOT v. Drack*, 42 A.3d 355, 363 (Pa. Commw. Ct. 2012) (noting that a requester’s failure to pay duplication fees for past requests may have provided the agency with a reason to deny or refuse to process subsequent requests until the outstanding balance was paid).

³⁷ 65 P.S. § 67.502(b)(2)(i) (“Note the date of receipt on the written request”).

- a. Date received. For requests received after the close of an agency business day, the request is marked as received on the next business day.
2. *Note the five (5) business day response deadline.*³⁸ Compute the day on which the five (5) day response period expires and make a notation of that date on the written request.
3. *Maintain a file containing the request and related correspondence.*³⁹ Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled and either the timeframe for an appeal has passed or any appeal has been resolved.
4. *Log the request on Request Tracking Sheet.*⁴⁰ Once the AORO determines that written correspondence requires a response pursuant to the RTKL, the AORO should log the request on the Request Tracking Sheet.

III. Processing the Request

A. Generally

Once a valid request is received, the AORO must review the request to determine whether the agency possesses the record and, if the agency does not possess the record, to what entity the request should be forwarded.⁴¹ If the request seeks agency records, the AORO must determine whether the record is a public record, provide notice to any third-parties with an interest in the responsive records, and invoke an extension of time, if necessary.⁴²

B. Conduct a Search for Responsive Records

1. *Good faith search for responsive records.* The AORO must determine whether a request seeks agency records. To make the determination, the AORO must make a good faith effort to search agency records.⁴³

³⁸ 65 P.S. § 67.502(b)(2)(ii) (“Compute the day on which the five-day period under section 901 will expire and make a notation of that date on the written request”).

³⁹ 65 P.S. § 67.502(b)(2)(iii), (iv) (providing for the maintenance of a request and related correspondence).

⁴⁰ 65 P.S. § 67.502(b)(1) (requiring the open records officer to “track the agency’s progress in responding to requests”).

⁴¹ 65 P.S. § 67.502(b)(1) (requiring the open records officer to “direct requests to other appropriate persons within the agency or to the appropriate person in another agency”).

⁴² 65 P.S. § 67.502(b)(1) (requiring the open records officer to “issue interim and final responses” to requests).

⁴³ *Dep’t of Envtl. Prot. v. Legere*, 50 A.3d 260, 266 (Pa. Commw. Ct. 2012) (holding that an agency is required to actually search its files noting that “[t]here is simply nothing in the RTKL that authorizes an agency to refuse to search for and produce documents based on the contention it would be too burdensome to do so”); *Hodges v. Dep’t of Health*,

- a. Search agency records. An agency, through its designated AORO, must determine whether the identified record is within its possession, custody or control.⁴⁴
 - i. The agency's search must be reasonable under the circumstances⁴⁵ and the AORO must inquire with other members of the agency as to their possession of responsive records.⁴⁶
 - ii. The RTKL applies to all agency records, including records created prior to the effective date of the RTKL.⁴⁷
- b. Inquire about records of third party contractors performing a governmental function.⁴⁸ In addition to searching files in the agency's possession, the agency must also search files accessible through contracts with third parties performing a governmental function.
 - i. The contract must be related to a governmental function. In order for a contract to be related to a governmental function, the contract must delegate a substantial facet of the agency's role and responsibilities, as opposed to entry into routine service agreements with independent contractors.⁴⁹
 - ii. Inquire with third-party contractor as to records directly related to the contract. An agency must provide third party records that directly relate to the governmental function that is the subject of the contract.⁵⁰

29 A.3d 1190, 1193 (Pa. Commw. Ct.. 2011) (noting that an agency is “not required to sift through all of its records in order to determine if something under a different spelling or classification might possibly relate to [a] ... request”).

⁴⁴ *In re Silberstein*, 11 A.3d 629, 633 (Pa. Commw. Ct. 2011); *Barkeyville Borough v. Stearns*, 35 A.3d 91, 96 (Pa. Commw. Ct. 2012) (“we cannot say that simply because emails are in the personal accounts of individual Council members that they are not in the possession of the Borough”); *Mollick v. Twp. of Worcester*, 32 A.3d 859, 872-873 (Pa. Commw. Ct. 2011) (remanding to the OOR with instructions for the OOR to compel the Township AORO to “make a good faith determination” of “whether the Township, through an inquiry of its Supervisors, has possession, custody, or control of the identified records”).

⁴⁶ 65 P.S. § 67.502(b)(1) (“The open-records officer shall ... direct requests to other appropriate persons within the agency”).

⁴⁷ *Mollick v. Twp. of Worcester*, 32 A.3d 859, 870 (Pa. Commw. Ct.. 2011).

⁴⁸ 65 P.S. § 67.506(d)(1) (including records in the possession of agency third-party contractors that directly relate to contracted governmental functions as public records subject to access).

⁴⁹ *SWB Yankees LLC v. Wintermantel*, 615 Pa. 640, 663 (Pa. 2012).

⁵⁰ *Allegheny County Dep't. of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1039 (Pa. Commw. Ct. 2011).

- c. Requests implicating records of third-parties. Where requests implicate the rights of third parties, the best practice is to invoke a 30-day extension to respond to the request to allow an adequate opportunity for the third party to protect their interests. ([Exhibit 2](#))
 - i. Generally. If the request seeks records of third parties, including agency employees, the AORO must provide notice of the request to those individuals and allow the individuals raise any concerns they may have.⁵¹ The AORO is responsible for determining whether or not the record at issue is exempt from public access under the RTKL.
 - ii. Requests for trade secret or confidential proprietary information.⁵² An agency shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information.⁵³

C. Determine if the Agency Possesses Responsive Records

1. *Requests for records that the agency does not possess.* If the request clearly seeks agency records and, after a good faith search, the AORO determines that the agency does not possess responsive records, the requester must be issued a response denying the request for access. As noted above, a good faith search should include but not be limited to searching every place the records may be stored whether in electronic or hardcopy format. A good faith search will also entail inquiring with relevant Agency personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession. ([Exhibit 3](#))
2. *Misdirected Request.*⁵⁴ After a review of agency records, if the AORO determines that the agency does not possess the requested records but another agency or entity may possess the record, the AORO will prepare a response informing the requester that his or her request is misdirected.
 - a. A known agency possesses records. If the AORO is aware of what agency may possess the record, the response should include the AORO contact information for the relevant agency or agencies. A copy of the response

⁵¹ 65 P.S. § 67.502(b)(1) (“the open-records officer shall ... direct requests to other appropriate persons within the agency”).

⁵² 65 P.S. § 67.707(b) (providing notice requirements for requests seeking trade secrets).

⁵³ See 65 P.S. § 67.102 (defining “confidential proprietary information” and “trade secret”).

⁵⁴ 65 P.S. § 67.502(b)(1) (“The open-records officer shall ... direct requests ... to appropriate persons in another agency”).

should also be sent to the relevant AORO. ([Exhibit 4](#)) Additionally, it should be made clear to the requester that they must submit a new RTKL request to that agency, and that the new request will start a new 5 business day response time.

- b. An unknown agency possesses the record. If the AORO it is unclear which agency may possess responsive records, the response should inform the requester that the agency does not possess records responsive to the request and that the agency is unable to forward him or her to the appropriate agency. ([Exhibit 5](#))
- c. Requests containing sensitive information. Occasionally, the requester will submit information such as a social security number or birth certificate as part of his or her request. In the event the request is misdirected, the agency may exclude or redact the sensitive information from the copy of the request provided to the agency. The fact that information was excluded should be explained in the agency's response. ([Exhibit 6](#))

D. Determine if the Requested Record is a Public Record

1. A record in the possession or constructive possession of the agency is presumed to be public.⁵⁵
2. The presumption that a record is public does not apply if:
 - a. The record is exempt under section 708.

Note: Financial records⁵⁶ and aggregated data⁵⁷ are not subject to all Section 708(b) exemptions.

⁵⁵ 65 P.S. § 67.305(a) (“A record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record”).

⁵⁶ 65 P.S. § 67.708(c) (stating that “[t]he exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5)(6), (16), OR (17). An agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.”); 65 P.S. § 67.102 (defining “financial records” as any account, voucher, or contract dealing with the disbursement funds by an agency).

⁵⁷ 65 P.S. § 67.708(d) (stating that “The exceptions set forth in subsection (b) shall not apply to aggregated data maintained or received by an agency, except for data protected under subsection (b)(1), (2), (3), (4) or (5)”; 65 P.S. § 67.102 (defining “aggregated data” as “A tabulation of data which relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories”).

- b. The record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.⁵⁸
- c. The record is protected by a privilege.⁵⁹

E. Requests for Hearing Transcripts⁶⁰

Special rules apply to transcripts of administrative proceedings:⁶¹

1. Before final adjudication. Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester by the agency stenographer or a court reported, in accordance with agency procedure or an applicable contract.
2. After final adjudication. Following an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester in accordance with the applicable duplication rates.

F. Requests for Records in a Specific Medium

If a requester seeks a record in a specific medium, the AORO must provide the record in the medium requested.⁶² If the record does not exist in the medium requested, the record must be provided in the medium in which it exists. The agency is not required to convert a record into a format in which it does not currently exist.⁶³

⁵⁸ 65 P.S. § 67.306 (“Nothing in [the RTKL] ... shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree”).

⁵⁹ 65 P.S. § 67.102 (defining privilege to include “The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth”).

⁶⁰ 65 P.S. § 67.707(c) (providing for hearing transcript requests).

⁶¹ 65 P.S. § 67.102 (defining administrative proceeding” as “A proceeding by an agency the outcome of which is required to be based on a record or documentation required by law or in which a statute or regulation is particularized in application to individuals. The term includes an appeal”).

⁶² 65 P.S. § 67.701(a) (“A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists”); *see Cap v. Lehigh and Northampton Transportation Authority*, OOR Dkt. AP 2013-0168, 2013 PA O.O.R.D. LEXIS 112 (“under the RTKL, ‘medium’ is a broad term, and ‘electronic medium’ encompasses all electronic formats”).

⁶³ 65 P.S. § 67.705 (stating that an agency is not “required to ... format ...a record in a manner in which the agency does not currently ... format ... the record”); *Thomas v. Shohola Township*, OOR Dkt. AP 2013-0506, 2013 PA O.O.R.D. LEXIS 358 (holding that, while an agency was not required to convert an electronic record into a specific format, the agency had to provide the record in the electronic format in which it existed).

G. Procedural Issues When Processing a Request

1. *AORO correspondence seeking clarification of a request.* In the event that the AORO is unable to determine what records are being sought in the request, the AORO may contact the requester to seek clarifying information in order to provide a requester with the records being sought. ([Exhibit 7](#))
2. *Withdrawal of requests.* If a requester wishes to withdraw a request for any reason, the withdrawal must be submitted to the AORO in writing. Upon receipt of the withdrawal and within the statutory response period, the AORO should issue correspondence acknowledging the withdrawal of the request and informing the requester that no formal response will be issued. ([Exhibit 8](#))

H. Informal Contact with Requesters

Often, questions about a request can be resolved when an AORO contacts the requester directly. For example, many requesters submit broad requests to ensure that they receive the records they wish to review. However, a conversation with the requester could help narrow the request and make it more manageable for the AORO. Note that, for the sake of clarity in the event of an appeal, any modifications to a request should be made in writing and approved by the requester.

IV. Fees

A. Generally

An agency is permitted to impose fees for duplication and postage under the RTKL in accordance with the [OOR Fee Schedule](#). An agency is not permitted to charge for staff time required for processing a request for records.

B. Postage⁶⁴

The agency is entitled to charge the actual cost of mailing the response.

C. Duplication Fees⁶⁵

1. *Requests where duplication fees exceed \$100.*⁶⁶ Prior to granting a request for access, an agency may require a requester to prepay an estimate of the fees

⁶⁴ 65 P.S. § 67.1307(a).

⁶⁵ 65 P.S. § 1307.

⁶⁶ 65 P.S. § 67.1307(h). *See Prison Legal News v. Office of Open Records*, 992 A.2d 942, 946 (Pa. Commw. Ct. 2010) (holding that an agency must adequately explain its methodology for arriving at its estimate on appeal).

authorized under this section if the fees required to fulfill the request are expected to exceed \$100.

2. *Requests where access is granted, but prepayment of duplication fee is required in response.*⁶⁷ All applicable fees must be paid in order to receive access to the records requested.^{68,69}
3. *Complex and extensive data sets.*⁷⁰ Special fees apply to complex data sets, including geographic information systems (“GIS”) or integrated property assessment lists.
 - a. Generally. Fees for copying complex data sets may be based on the reasonable market value of the same or closely related data sets.⁷¹
 - b. Exception. Requests made on behalf of certain groups are not calculated by the reasonable market value. Instead, the duplication fees are calculated based on the duplication rates established by the OOR.⁷² The groups include:
 - i. A request by an individual employed by or connected with a newspaper or magazine or general circulation, weekly newspaper publication, press association or radio or television station, for the purposes of obtaining information for publication or broadcast.⁷³
 - ii. A request by a nonprofit organization for the conduct of educational research.⁷⁴

⁶⁷ 65 P.S. § 67.901 (“All applicable fees shall be paid in order to receive access to the record requested”).

⁶⁸ *See Pa. Dep’t of Transp. v. Drack*, 42 A.3d 355, 363 (Pa. Commw. Ct. 2012).

⁶⁹ *See Frame v. Menallen Twp.*, OOR Dkt. AP 2009-1072, 2010 PA O.O.R.D. LEXIS 155 (“Because the RTKL specifies that ‘all applicable fees shall be paid [i]n order to receive access to the record requested,’ 65. P.S. § 67.901, the law contemplates that a requester shall pay before actually receiving the records, whether for inspection or duplication.”).

⁷⁰ 65 P.S. § 67.1307(b)(4).

⁷¹ *Campbell v. County of Bucks*, OOR Dkt. AP 2013-1201, 2013 PA O.O.R.D. LEXIS 747 (noting that “fees charged for property assessment records vary widely across the Commonwealth” and holding that the fee imposed was a reasonable market value because “the per parcel fee was comparable to the fees charged by other counties”).

⁷² 65 P.S. § 67.1307(b)(4)(iii).

⁷³ 65 P.S. § 67.1307(b)(4)(ii)(A).

⁷⁴ 65 P.S. § 67.1307(b)(4)(ii)(B). *See, e.g., Shockley v. Lycoming County*, OOR Dkt. AP 2010-0613, 2010 PA O.O.R.D. LEXIS 533 (holding that a realtor association was not conducting “educational research” when requesting all property data in the county).

4. *Certified copies.*⁷⁵ If an agency's response grants a request for access, the agency shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable duplication fees.
5. *Additional fees.*⁷⁶ The agency may impose necessarily incurred costs to comply with a request, if such fees are reasonable.
6. *No agency processing fees can be imposed.*⁷⁷ No fee may be imposed for an agency's review of a record to determine whether the record is a public record or financial record in accordance with the RTKL.
7. *Conversion of electronic or other media to paper.*⁷⁸ If a record is only maintained electronically or in other nonpaper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media as set by the OOR duplication fee schedule, unless the requester specifically requests for the record to be duplicated in the more expensive medium.
8. *Estimated duplication fees must be included in any extension notice.*⁷⁹ An agency is required to include an estimate of duplication fees in any extension notice.

⁷⁵ 65 P.S. § 67.904 (providing for the imposition of applicable fees for the certification of records); *Rodriguez v. Dep't of Corrections*, OOR Dkt. AP 2013-1689, 2013 PA O.O.R.D. LEXIS 934; *see also* 42 Pa. C.S. § 6103 (relating to authentication of official records). "Certified copy" is defined as "A duplicate of an original (usu. official) document, certified as an exact reproduction usu. by the officer responsible for issuing or keeping the original." Black's Law Dictionary 337 (7th ed. 1999).

⁷⁶ 65 P.S. § 1307(g). *Frable v. Pocono Mountain Charter School*, OOR Dkt. AP 2013-0286, 2013 PA O.O.R.D. LEXIS 192 (holding that a "computer recovery fee" was not necessarily incurred by the agency); *Bernotas v. City of Bethlehem*, OOR Dkt. AP 2011-0969, 2011 PA O.O.R.D. LEXIS 338 (holding that third-party costs for duplication of audio recordings were necessarily incurred where the agency did not have the equipment necessary to duplicate the recordings).

⁷⁷ 65 P.S. § 1307(g). *State Emples. Ret. Sys. v. Office of Open Records*, 10 A.3d 358, 363 (Pa. Commw. Ct. 2010) ("[T]he RTKL does not ... authorize the charging of labor costs") *LPS Real Estate Data Solutions, Inc. v. Greene County*, OOR Dkt. AP 2011-1177, 2011 PA O.O.R.D. LEXIS 916 (holding that an agency could not impose fees for labor costs for redacting records).

⁷⁸ 65 P.S. § 67.1307(d). *Peterson v. Dep't of Envtl. Protection*, OOR Dkt. AP 2012-2108, 2013 PA O.O.R.D. LEXIS 72 (holding that an agency was entitled to impose a \$0.25 duplication fee for the conversion of a microfiche record to paper).

⁷⁹ 65 P.S. § 67.902(b)(2) ("The notice shall include ... an estimate of applicable fees owed when the record becomes available").

D. Enhanced Electronic Access⁸⁰

Upon approval of the OOR, an agency is permitted to impose a fee for enhanced electronic access if all of the following factors apply:

1. Enhanced electronic access is provided in addition to the information being otherwise available;
2. The fees are based on a clearly set forth subscription fee and are reasonable;
3. The fees have not been established with the intent or effect of excluding persons from access to records; and
4. The fees were not established with the intent or effect of creating a profit for the agency.

E. Waiver of Fees⁸¹

An agency may waive fees for duplication at its discretion, including when a requester duplicates the record at the requester's own expense or the agency deems it in the public interest to do so. The agency has broad discretion to impose duplication fees, but must be able to state a nondiscriminatory reason to deny a request to waive duplication fees.

V. Extending the Response Period

A. Invoking a Thirty (30) Day Extension⁸²

If the AORO is required to invoke a thirty (30) day extension to the response period, the AORO must follow the requirements of Section 902 of the RTKL or the request will be deemed denied. ([Exhibit 9](#)) An agency's decision to invoke an extension of time is within its discretion and is not subject to OOR review.⁸³ An extension notice must comply with the following requirements⁸⁴:

⁸⁰ 65 P.S. § 1307(e). *Dean v. Lycoming County*, OOR Dkt. AP 2009-0282, 2009 PA O.O.R.D. LEXIS 154.

⁸¹ 65 P.S. § 67.1307(f). *Prison Legal News v. Office of Open Records*, 992 A.2d 942, 948 (Pa. Commw. Ct. 2010) (holding that an agency must articulate some non-discriminatory reason for not waiving a fee upon request).

⁸² 65 P.S. § 67.902(b) (providing for an extension of time to respond to a request).

⁸³ *Mezzacappa v. Borough of West Easton*, OOR Dkt. AP 2013-0853, 2013 PA O.O.R.D. LEXIS 453 (“matters committed to agency discretion are not subject to the jurisdiction of the OOR”).

⁸⁴ 65 P.S. § 67.902(b)(2) (requiring an agency to include certain information in its extension notice).

1. Issue the thirty (30) day extension notice within the five (5) business day response period.
2. Identify the reason for which the extension is required.⁸⁵ The AORO must state one or more of the following reasons for extending the response period:
 - a. the request for access requires redaction of a record;
 - b. the request for access requires the retrieval of a record from a remote location;
 - c. a timely response to the request for access cannot be accomplished due to bona fide⁸⁶ and specified staffing limitations;
 - d. a legal review is necessary to determine whether the record is a record subject to access under the RTKL;
 - e. the requester has not complied with the agency's policies regarding access to records;
 - f. the requester refuses to pay applicable fees authorized by the RTKL;
 - g. the extent or nature of the request precludes a response within the required time period.
3. Identify the date by which the agency is required to issue its response or the date that the agency reasonably expects to issue its response, whichever is earlier.
4. If applicable, the requester should be notified about any duplication fees required.

B. Extension Beyond Thirty (30) Days

In the event that the AORO requires additional time beyond the thirty (30) day extended response period in order to generate the response, the AORO must obtain the written agreement of the requester to extend the response period.⁸⁷ ([Exhibit 10](#)) The requester's written agreement must occur during the statutory response period, otherwise the request will be deemed denied.

⁸⁵ 65 P.S. § 67.902(a).

⁸⁶ "Bona fide" is defined as including "2. Sincere; genuine." Black's Law Dictionary 168 (7th ed. 1999).

⁸⁷ 65 P.S. § 67.902(b)(2) (providing for an extension beyond thirty (30) days upon the written agreement of the requester).

VI. Issuing the Response

A. Generally

In addition to extending the response period by 30 days (or more if agreed to by the requester), an agency may only issue one response granting or denying access to records.⁸⁸ The response⁸⁹ should be in writing and must be sent to the requester within the appropriate response period.⁹⁰ While granting access to records is not required to be in writing, it is the best practice to do so as the sufficiency of an agency's response can be challenged by the requester. In addition to the agency's response, a copy of the original request and any extension notices should be provided to the requester. If the request is misdirected and the contact information for the appropriate AAORO has been provided, the appropriate agency should be copied on the response.

B. Granting the Request

A request is granted when all requested information is provided to the requester. While the RTKL does not require that an agency provide appeal information for granted requests, because a factual question may arise as to the sufficiency of the responsive records provided, the best practice is to issue the response from the open records officer and provide the appropriate appeal information.

C. Granting Access to Inspect Records

1. *Generally.*⁹¹ Agencies may grant access to records by making the records available for inspection. The agency may set a reasonable time to meet with the requester and supervise the requester's review of the records to safeguard the records being inspected.⁹² ([Exhibit 11](#))

⁸⁸ See 65 P.S. § 67.903; *see, e.g., DOT v. Drack*, 42 A.3d 355 (Pa. Commw. Ct. 2012).

⁸⁹ 65 P.S. § 67.102 (defining "response" as "Access to a record or an agency's written notice to a requester granting, denying or partially granting and partially denying access to a record").

⁹⁰ See 65 P.S. §§ 67.901 (requiring a response within five (5) business days), 67.902(b)(2) (permitting an agency to issue a response within a properly invoked thirty (30) day extension to the response period), 67 P.S. § 902(b)(2), (3) (permitting an agency to issue a response beyond the thirty (30) day extension period upon the written consent of the requester).

⁹¹ 65 P.S. § 67.701(a) ("Public record ... or financial records shall be available for access during the regular business hours of an agency").

⁹² *Mezzacappa v. West Easton Borough*, OOR Dkt. AP 2012-0371, 2012 PA O.O.R.D. LEXIS 559.

2. *Computer access.*⁹³ A requester is not entitled to access an agency's computer in response to a request.

D. Granting Electronic Access to Records⁹⁴

In response to a request, an agency may make its records available through any publicly accessible electronic means.

1. *Granting electronic access.* An agency may respond to a request by notifying the requester that the record is available through publically accessible electronic means, such as on the agency's website, or that the agency will provide access to inspect the record electronically. ([Exhibit 12](#))
2. *Where a requester cannot access a record electronically.* If the requester is unwilling or unable to access the record electronically:
 - a. The requester may, within twenty (20) days following receipt of the agency notification, submit a written request to the agency to have the record converted to paper.
 - b. The agency shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper.
 - c. A requester cannot appeal an agency response granting electronic access prior to following the appropriate procedures.⁹⁵

E. Required Information for a Denial or Partial Denial

Certain information must be included in a response that denies a request for information.⁹⁶

1. *General requirements of a denial.* The denial of access:
 - a. Must be in writing.

⁹³ 65 P.S. § 67.701(b) ("Nothing in [the RTKL] ... shall be construed to require access to any computer either of an agency or individual employee of an agency"); *Mezzacappa v. City of Easton*, OOR Dkt. AP 2012-0102, 2012 PA O.O.R.D. LEXIS 50.

⁹⁴ 65 P.S. § 67.704(b)(1) (providing for an agency to grant electronic access to records).

⁹⁵ *Raffle v. Pennsbury School District*, OOR Dkt. AP 2012-2048, 2013 PA O.O.R.D. LEXIS 56 (holding that an appeal to the OOR is not "'a written request to the agency to have the record converted' (emphasis added) such that it triggers an agency's responsibility to take further action pursuant to Section 704(b)(2) of the RTKL").

⁹⁶ 65 P.S. § 67.903 (providing the information required in an agency's denial of a request).

- b. Must include a description of the record requested.
 - c. Must set forth the specific reasons for the denial, including a citation of supporting legal authority.⁹⁷
 - d. Must include the typed or printed name, title, business address, business telephone number and signature of the AORO on whose authority the denial is issued.
 - e. Must include the date of the response.
 - f. Must include the procedure to appeal the denial of access under the RTKL.⁹⁸
2. *Partial denial of access.*
- a. Partial denial. An agency may grant a request in part and deny a request in part if the agency believes that the request seeks both public and nonpublic information. Where a request seeks multiple item requests, the best practice is to issue response item by item and state which portions of a request item are granted or denied.
 - b. Redactions.⁹⁹ Where an otherwise public record contains public nonpublic information, the nonpublic information may be withheld from public access. Because redactions are a form of denial, the agency must state the basis on which the redacted information is withheld.¹⁰⁰

F. Exercising Discretion to Release Otherwise Nonpublic Records

1. *Agency discretion*.¹⁰¹ The agency may release nonpublic records in its discretion, unless it is otherwise prohibited by federal or state law or regulation, court order, or privilege.¹⁰²

⁹⁷ *Saunders v. Pa. Dep't of Corr.*, 48 A.3d 540, 543 (Pa. Commw. Ct. 2012) (noting that an adequate response need only cite to and parrot the statutory language of an exemption to provide the requester with notice as to the grounds of the agency's denial).

⁹⁸ A local agency response denying access to records pursuant to the criminal investigative records exemption, 65 P.S. § 67.708(b)(16), is required to include the appeal information for the County District Attorney's Office in the county where the local agency is located. *See* 65 P.S. §§ 67.503(d) (providing for the appeal of criminal investigative records in the possession of a local agency); 67.903(5) (“[t]he procedure to appeal the denial of access under this act”).

⁹⁹ 65 P.S. § 67.706 (providing from the redaction of nonpublic information from an otherwise public record).

¹⁰⁰ *Branton v. Williams Township*, OOR Dkt. AP 2012-1018, 2012 PA O.O.R.D. LEXIS 1059.

¹⁰¹ 65 P.S. § 506(c) (providing for agency discretion to release otherwise exempt records).

¹⁰² The discretion to release such a record for public policy reasons rests solely with the agency. *See* 65 P.S. § 67.506(c). An agency may choose to exercise its discretion to release the requested records, but is not required, to do so. *See Dep't of Health v. OOR*, 4 A.3d 803, 815 (Pa. Commw. Ct. 2010).

2. *Release of information related to a third party that is not a public record.* If the agency chooses to release a record related to a third party that is not a public record, the agency must notify the third party of its decision to release the record.¹⁰³ When releasing nonpublic information involving third parties, the agency should do the following:
 - a. The agency should invoke an extension during which to respond.
 - b. The agency must provide notice to the third party whose records are at issue.
 - i. Generally.¹⁰⁴ Notification must be provided to third parties within five business days of the receipt of the request for a record and the third party must have five business days from the receipt of the notification to provide input on the release of the record.
 - ii. Requests for trade secret or confidential proprietary information.¹⁰⁵ An agency shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information.¹⁰⁶
 - c. The agency must review the third party's submission to determine whether or not access should be granted.
 - d. The agency must notify the third party of its decision to grant or deny the request. The agency shall deny the request for the record or release the record within 10 business days of the provision of notice to the third party and shall notify the third party of the decision.

G. Maintaining the Request File

The AORO must maintain a file of all requests to the agency.

¹⁰³ 65 P.S. § 67.707(a) (requiring an agency to provide notice to a third-party where a nonpublic record is provided to the requester).

¹⁰⁴ 65 P.S. § 67.707(a) (providing for notice to third-parties where an agency releases nonpublic information).

¹⁰⁵ 65 P.S. § 67.707(b) (providing notice requirements for requests seeking trade secrets).

¹⁰⁶ See 65 P.S. § 67.102 (defining "confidential proprietary information" and "trade secret").

1. *Contents of the file.*¹⁰⁷ Create a file and keep all of the following:
 - a. The original request.
 - b. A copy of the response.
 - c. A record of written communications with the requester.
 - d. A copy of other communications.
2. *Retention of the request file.* The file containing the RTKL requests, responses and related correspondence is subject to a two-year retention period.¹⁰⁸ It may be necessary to keep responses that are appealed beyond two years if the request file is subject to a legal hold.

H. Post-Response Issues

1. *Returned Letters or E-mails.* In the event that a request is returned due to an error in the address or other reason, resend the letter and include a cover letter explaining why the letter was returned to the agency. ([Exhibit 13](#))
2. *Follow up Correspondence.* Any correspondence received after the response is issued should be included in the relevant AORO request file with any required response.¹⁰⁹
3. *Record discard.*¹¹⁰ If an agency response to a requester states that copies of the requested records of are available for delivery at the office of an agency and the requester fails to retrieve the records within 60 days of the agency's response, the agency may dispose of any copies which have not been retrieved and retain any fees paid to date.

¹⁰⁷ 65 P.S. § 67.502(b)(2)(iv) (requiring Commonwealth agencies to “[c]reate a file for the retention of the original request, a copy of the response, a record of written communications with the requester and a copy of other communications”).

¹⁰⁸ See Commonwealth General Records Retention and Disposition Schedule, Item No. G001.014 (2014); County Records Retention and Disposition Schedules, Item No. AL-28 (2012); Municipal Records Retention and Disposition Schedule, Item No. AL-46 (2009).

¹⁰⁹ 65 P.S. § 67.502(b)(2)(iv).

¹¹⁰ 65 P.S. § 67.905 (providing for the discarding of records where duplication fees have not been paid).

VII. Appeals of Agency Responses

A. Generally

In the event that a requester appeals the agency's denial of a request for records, the agency must defend the denial of access before the appropriate Appeals Officer at the Office of Open Records.¹¹¹ The agency has the burden of proving that the requested records are not public records under the RTKL.

B. Notification of Third Parties

If the appeal of the agency response involves the records of third parties, including agency employees, those parties may have a direct interest in the records in dispute and the AORO must provide notice of the appeal to those individuals should the wish to participate in the appeal as a direct interest participant. ([Exhibit 14](#)) A third party may choose to participate in the appeal within 15 days of actual knowledge of the appeal but no later than the date the appeals officer has issued a final order.

C. Appeal Submissions

If a written request for access to a record is denied or deemed denied, the requestor may file an appeal with the OOR within fifteen (15) business days of the mailing date of the agency's response or deemed denial. The OOR assigned Appeals Officer will issue an official Notice of Appeal which will include the length of time the parties have to submit legal argument and evidence in support of their positions. Unless the requestor agrees otherwise, the Appeals Officer will make a final determination which will be mailed to the requester and the agency within thirty (30) days of receipt of the appeal.

During the course of an appeal before the agency, the AORO may be required to make submissions on behalf of the agency to meet its burden of proof for denying access to records.¹¹² Submissions may include:

1. Position statement. ([Exhibit 15](#))
2. Affidavit regarding agency possession of records. ([Exhibit 16](#))
3. Affidavit attesting that a request was not received. ([Exhibit 17](#))

¹¹¹ 65 P.S. § 67.1101 (providing for the appeal of an agency's denial of a request for records to the appropriate appeals officer); 65 P.S. § 67.708(a)(placing the burden of proof on an agency to establish that a record is not subject to public access).

¹¹² 65 P.S. § 67.708(a)(1) (placing the burden of proof on a Commonwealth or local agency to show that a record is exempt from public access).

4. Affidavit attesting that all responsive records have been provided. ([Exhibit 18](#))
5. Exemption log with supporting affidavit. ([Exhibit 19](#))

Exhibits

1. [Request Tracking Sheet](#)
2. [Notice to Third Party of a Request for Records](#)
3. [Response: Agency does not Possess Responsive Records](#)
4. [Response: Misdirected Request, Another Agency Possesses the Record](#)
5. [Response: Misdirected Request, Appropriate Agency Unknown](#)
6. [Response to Request Containing Sensitive Information](#)
7. [AORO Correspondence Seeking Clarification of the Request](#)
8. [Confirmation of the Withdrawal of a Request](#)
9. [Notification of Extension](#)
10. [Request for Extension Beyond 30 Days](#)
11. [Response Granting Access to Inspect Records](#)
12. [Letter Granting Electronic Access to Records](#)
13. [Cover Letter for Resending Returned Response](#)
14. [Notification of Third Parties of the Pendency of an Appeal Before the OOR](#)
15. [AORO Position Statement](#)
16. [Affidavit: Regarding Agency Possession of Records](#)
17. [Affidavit: Request Not Received](#)
18. [Affidavit: All Responsive Records Provided](#)
19. [Exemption Log](#)

EXHIBIT 1

Request Number	Date Request Received	Name of Requester	Requester Organization	Type of Requestor	Method of Request	Records Requested	30 Day Extension needed	Response Due	Date response sent	Method of Response	Type of Response	Agency to which Request forwarded
1.2013	1/2/2013	John Smith	Smith Environmental	company	e-mail	environmental conditions of specific address in East Allen Twp	no	1/9/2013	1/8/2013	e-mail	misdirected	PA Dept. of Environmental Protection East Allen Township
2.2013	1/3/2013	John Smith	Smith News	media	e-mail	various documents from the Pennsylvania Department of Revenue	no	1/10/2013	1/10/2014	e-mail	misdirected	Pennsylvania Department of Revenue
3.2013	1/6/2013	John Doe		citizen	e-mail	sentencing orders for docket numbers	no	1/11/2013	1/13/2014	e-mail	misdirected	PA Dept. of Corrections Chester County Clerk of Courts
4.2013	1/8/2013	Jane Doe		inmate	mail	copy of RTKL, Citizen's Guide, Standard RTKL request form, appeal forms	no	1/15/2013	1/15/2014	mail	granted	

EXHIBIT 2

July 24, 2013

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Right-to-Know Law Request from Jane Smith (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

I write to inform you that the Office of Open Records (“OOR”) has received a request from Jane Smith for the submissions you made during the course of the appeals *Smith v. Agency*, OOR Dkt. AP 2014-0000. A copy of Ms. Smith’s request is included with this letter.

I have reviewed the submissions in the relevant appeals and identified two e-mails as responsive to the request—an May 14, 2014 e-mail seeking information about how to participate in the appeal and an April 29, 2013 transmitting a position statement. Both e-mails were sent during the course of the appeal *Smith v. Agency*, OOR Dkt. AP 2014-0000. The April 29, 2013 e-mail includes your position statement setting forth your argument for withholding records based on personal security concerns for you and your family. Copies of the responsive e-mails are included with this letter.

The OOR invoked an extension to respond to Ms. Smith’s request and a response from our office is due on or before June 14, 2014; a copy of the extension is included with this letter. The OOR considers the attached e-mails public records and intends to provide them to Ms. Smith. However, due to the personal security concerns raised in your submissions, we wanted to provide you with the opportunity to review the requested documents and raise any concerns you may have to the release of the information.

Please review the attached records and if you believe the information should be withheld due to personal security concerns, please submit a statement made under the penalty of perjury setting forth in specific detail why the records should not be released, how any release would pose a risk, and the basis on which you believe the records should be withheld. We request that you submit any supporting statement by 5:00 pm on June 1, 2014.

If you have any questions, or would like to discuss this matter further, please give me a call. My telephone number is (717) 555-0123.

Sincerely,

[Name]

Open Records Officer

EXHIBIT 3

August 13, 2013

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Right-to-Know Law Request (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

On August 6, 2013, you requested records related to Office of Open Records (“OOR”) final determinations involving John Smith during the last five (5) years.

After receiving your request, we conducted a search of our prior final determinations and found that the OOR has not issued a final determination where John Smith was a party. As a result, the OOR does not possess records responsive to your request.

To appeal this response, you must file an appeal with this office with 15 business days of its mailing date pursuant to Section 1101 for the Right-to-Know Law. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,

[Name]
Open Records Officer

EXHIBIT 4

June 6, 2013

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Records Request Pursuant to the Right-to-Know Law (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records (“OOR”) pursuant to the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.101, *et. seq.* On June 6, 2013, you requested information regarding an identified individual. Your request is **misdirected**. The OOR does not possess, maintain or control these records. The OOR decides appeals of denied requests for records, and is not a general repository of records.

You must submit your Right-to-Know request directly to the Pennsylvania Department of Human Services (“Department”), as it is the agency that may possess these records. Their Open Records Officer can be contacted at:

Andrea Bankes, Open Records Officer
Pennsylvania Department of Human Services
234 Health & Welfare Bldg.
Harrisburg, PA 17105
717-787-3422 (Phone)
717-772-2490 (Fax)
ra-dpwrtkl@pa.gov

We have copied the Department on this letter and included a copy of your request. 65 P.S. § 67.502(b)(1). However, you must file a new request with the Department. The OOR’s forwarding of your request does not trigger any timeframes in the RTKL or require a response from the Department.

If you choose to interpret this response as a denial, **or have specific reasons to believe that we have asserted non-possession in error**, you may appeal to this office, at the below-referenced address, within 15 business days of its mailing date. This file is now closed with the OOR as permitted by law.

Sincerely,

[Name]

Open Records Officer

cc: Andrea Bankes (via e-mail only)

EXHIBIT 5

May 19, 2014

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Right-to-Know Law Request: (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records (“OOR”) pursuant to the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.101, *et. seq.*, and requesting information from our office. On May 13, 2014, you requested “building permits issued since January 2013.”

Your request is **misdirected**. The OOR does not possess, maintain or control these records. The OOR decides appeals of denied requests for records, and is not a general repository of records. You must make your inquiry directly to the agency that creates, maintains or controls the records you seek. Unfortunately, I am unable to direct you to the appropriate agency, as it is unclear what agency or agencies would possess the records you seek.

If you choose to interpret this letter as a denial of a Right-to-Know Request, **or have specific reasons to believe the agency has asserted non-possession in error**, you must file an appeal with this office within 15 business days of its mailing date pursuant to Section 1101 for the Right-to-Know Law. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,

[Name]
Open Records Officer

EXHIBIT 6

May 30, 2013

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Records Request Pursuant to the Right-to-Know Law (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records. I have reviewed your Right-to-Know request received on May 29, 2013 in which you asked for records related to an individual's incarceration in Doylestown Prison. Your request is **misdirected**. The OOR does not possess, maintain or control these records. The OOR decides appeals of denied requests for records, and is not a general repository of records.

You may wish to submit your inquiry directly with Bucks County as it is the agency that may possess these records. Their open records officer can be contacted at:

Karen Fanelli, Open Records Officer
55 East Court Street, 5th Floor
Doylestown, PA 18901
Phone: (215) 348-6464
Fax: (215) 340-8206
OpenRecordsOfficer@co.bucks.pa.us

We have copied the agency on this letter and included a copy of your request with the individual's Social Security number redacted. The OOR's forwarding of your request does not trigger any timeframes in the RTKL or require a response from the agency.

In addition, Pennsylvania also has a website called Pennsylvania Access to Criminal History that may provide you with the information you are seeking. The website address is <https://epatch.state.pa.us/Home.jsp>.

If you choose to interpret this response as a denial, **or have specific reasons to believe that we have asserted non-possession in error**, you may appeal to this office, at the below-referenced address, within 15 business days of its mailing date. This file is now closed with the OOR as permitted by law.

Sincerely,

[Name]

Open Records Officer

cc: Karen Fanelli (via e-mail only)

EXHIBIT 7

July 24, 2013

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Right-to-Know Request (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records (“OOR”) pursuant to the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.101, *et. seq.*, and requesting information from our office. On October 15, 2013, you requested a copy of all versions of OOR appeal forms and templates.

We reviewed our files and the OOR possesses appeal forms that are used to assist in intake of requester appeals and final determination templates that consist of the final determination header without any additional information. Please let me know if these are the records you are seeking or, if you are looking for other records, please provide additional clarification regarding the records you are requesting.

If you have any questions, or would like to discuss this matter further, please give me a call. My telephone number is (717) 555-0123.

Sincerely,

[Name]
Open Records Officer

EXHIBIT 8

October 27, 2014

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Right-to-Know Law Request (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records (“OOR”) with your request for information pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. 67.101, *et. seq.* In your request received on October 20, 2014, you requested “all contracts signed in the past five years.”

On October 24, 2014, you withdrew your request by e-mail. This writing is to confirm your decision to withdraw the request. As such, no further action will be taken by the OOR.

If you choose to interpret this response as a denial, you may appeal to this office, at the below-referenced address, within 15 business days of its mailing date. This file is now closed with the OOR as permitted by law.

Sincerely,

[Name]
Open Records Officer

EXHIBIT 9

January 30, 2014

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Records Request Pursuant to the Right-to-Know Law (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records (“OOR”) with your request for information pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. 67.101, *et. seq.* On January 23, 2014, you requested “[t]he most recent employee pay statement that was issued prior to the date of this request, to Jane Doe, by the Commonwealth of Pennsylvania.”

Pursuant to Section 902(a) of the Right to Know Law, the OOR requires an additional 30 days to respond because:

- The request for access requires redaction of a record in accordance with Section 706 of the RTKL, 65 P.S. § 67.902(a)(1);
- A timely response to the request cannot be accomplished due to bona fide and specified staffing limitations, 65 P.S. § 67.902(a)(3);
- A legal review is necessary to determine whether the record is a record subject to access under this act, 65 P.S. § 67.902(a)(4); and
- The extent or nature of the request precludes a response within the required time period, 65 P.S. § 67.902(a)(7).

The OOR expects to respond to your request on or before March 1, 2014. We estimate that number of duplicated pages will exceed 120 pages resulting in a duplication fee in excess of \$12.00 (120 pages @ \$0.10 per copied page).

If you have any questions, or would like to discuss this matter further, please give me a call. My telephone number is (717) 555-0123.

Sincerely,

[Name]

Open Records Officer

EXHIBIT 10

October 27, 2014

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Right-to-Know Law Request (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

On April 30, 2014, you requested electronic copies of several OOR appeal files. The OOR's response to your request is due June 6, 2014, and we are in the process of reviewing and scanning the information you requested.

However, we require additional time to complete the compilation of the requested information. Would you agree to a two-week extension for the OOR to issue a response to your request? If you agree to extend the response period, the new deadline for the OOR to respond to your request would be June 20, 2014.

Please indicate whether you agree to the extension request at your earliest convenience.

If you have any questions, or would like to discuss this matter further, please give me a call. My telephone number is (717) 555-0123.

Sincerely,

[Name]
Open Records Officer

EXHIBIT 11

October 17, 2013

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Right-to-Know Law Request (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records (“OOR”) pursuant to the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.101, *et. seq.*, and requesting information from our office. On October 15, 2013, you requested to inspect the appeal file for in *Smith v. Agency*, OOR Dkt. AP 2013-0000.

Your request is granted. Please contact the OOR at your convenience to make an appointment to inspect these records and indicate the amount of time you require to inspect the records. Once we receive your proposed inspection time, we will either confirm the date and time in writing or propose alternative dates and times.

If you have any questions, or would like to discuss this matter further, please give me a call. My telephone number is (717) 555-0123.

If you choose to interpret this letter as a denial of a Right-to-Know Request, you must file an appeal with this office within 15 business days of its mailing date pursuant to Section 1101 for the RTKL. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,

[Name]
Open Records Officer

EXHIBIT 12

October 17, 2013

John Smith
123 Main Street
City, PA 12345
e-mail@email.com

RE: Right-to-Know Law Request (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records (“OOR”) pursuant to the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.101, *et. seq.*, and requesting information from our office. On October 15, 2013, you requested a copy of the final determination in *Smith v. Agency*, OOR Dkt. AP 2013-0000.

Your request is granted. The final determination you are seeking is now available on the OOR's website. The final determination can be accessed at the following address:

<http://dced.state.pa.us/open-records/final-determinations/>

See 65 P.S. § 67.704(b)(1). (providing for electronic access to records). Please note that if you are unwilling or unable to access this record electronically, you may submit a written request to the OOR to have this record converted to paper. *See id.* § 67.704(b)(2).

If you choose to interpret this letter as a denial of a Right-to-Know Request, you must file an appeal with this office within 15 business days of its mailing date pursuant to Section 1101 for the RTKL. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,

[Name]
Open Records Officer

EXHIBIT 13

July 1, 2013

John Smith
123 Main Street
City, PA 12345

RE: Right-to-Know Law Request (OOR Tracking No. [Tracking Number])

Dear Mr. Smith:

Thank you for writing to the Office of Open Records (“OOR”) pursuant to the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. § 67.101, *et. seq.*, and requesting information from our office. On June 17, 2013, the OOR issued a response to your Request. However, the letter was returned to the OOR because of a typographical error in your address. Enclosed, please find the response to your Request.

Sincerely,

[Name]
Open Records Officer

EXHIBIT 14

[Date]

[Name]

ABC Corporation
123 Main Street
City, PA 12345

RE: *Smith v. OOR*, OOR Dkt. AP 2014-0000

Dear _____:

On September 4, 2014, John Smith filed a Right-to-Know Law request with this agency seeking access to certain records. In particular, they asked us to produce all records between this agency and ABC Corporation. We denied this request on September 6, 2014. Part of the basis for our denial is that the records constitute confidential and proprietary information related to your businesses.

The requesting party appealed our denial to the Office of Open Records on September 26, 2014. We received notice of the Appeal from the Office of Open Records shortly thereafter. The notice and all related documents are included with this letter. Because this appeal may affect your rights, you may request to participate in this appeal. Failure to participate in this appeal may result in the waiver of objections regarding the release of requested records.

Thank you for your attention to this matter. If you have any questions regarding this appeal please contact me.

Sincerely,

Agency Counsel

EXHIBIT 15

[Date]

[Name]

Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

RE: *Smith v. OOR*, OOR Dkt. AP 2014-0000

Dear _____:

Please accept this correspondence in support of the Office of Open Records' ("OOR") position in the above captioned appeal. In its response, the OOR informed Mr. Smith (the "Requester") that it did not possess the requested records and the OOR forwarded the request to the appropriate agency. The Requester subsequently filed this appeal.

Attached, please find the attestation of _____, the OOR's Open Records Officer, in support of the OOR's position that it does not possess the records requested by the Requester. Under the RTKL, an affidavit may serve as sufficient evidentiary support of a statement of fact. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. OOR*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

For the forgoing reasons, we respectfully request that the OOR deny this appeal.

Sincerely,

Agency Counsel

cc: John Smith

EXHIBIT 16

[INSERT AGENCY LETTERHEAD]

ATTESTATION REGARDING AGENCY POSSESSION OF RECORDS

Name of Requester: [INSERT NAME OF REQUESTER]

Records Requested: [INSERT DESCRIPTION OF REQUEST]

Appeal Caption: [INSERT OOR CAPTION AND DOCKET NUMBER]

I, [INSERT NAME OF OPEN RECORDS OFFICER], hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

1. I serve as the Open Records Officer for the [INSERT NAME OF AGENCY] (“Agency”) and am responsible for responding to Right-to-Know requests filed with the Agency.
2. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.
3. Upon receipt of the request, I conducted a thorough examination of files in the possession, custody and control of the Agency for records responsive to the request underlying this appeal, specifically ... **[Provide additional details describing the search(es) conducted by the Agency and the records or types of records that were reviewed. If e-mails or other electronically stored records were searched, identify the location(s) searched (i.e., individual e-mail accounts, agency servers, deleted e-mail servers, service providers, etc.)]**
4. Additionally, I have inquired with relevant Agency personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession, specifically... **[Provide additional details identifying which third party was asked for records, whether the individual(s) or party(s) responded to the Agency’s inquiry and describe the content of their response(s). When applicable, provide additional information explaining why some or all of the records do not exist or why the agency does not possess the records.]**
5. Based upon the above-described search of the Agency’s files and inquiries with relevant Agency personnel, I have made the determination that the records requested are not within the Agency’s possession, custody or control.

Date: [Click here to enter a date.](#)

Signature: _____
[INSERT NAME OF OPEN RECORDS OFFICER]
Open Records Officer
[INSERT NAME OF AGENCY]

EXHIBIT 17

[INSERT AGENCY LETTERHEAD]

ATTESTATION THAT REQUEST NOT RECEIVED

Name of Requester: [INSERT NAME OF REQUESTER]

Records Requested: [INSERT DESCRIPTION OF REQUEST]

Appeal Caption: [INSERT OOR CAPTION AND DOCKET NUMBER]

I, [INSERT NAME OF OPEN RECORDS OFFICER], hereby declare under the penalty of perjury, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

1. I serve as the Open Records Officer for the [INSERT NAME OF AGENCY] (“Agency”).
2. I am responsible for responding to Right-to-Know requests filed with the Agency.
3. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.
4. Upon receipt of the instant appeal, I conducted a thorough examination of files in the possession, custody and control of the Agency for the request underlying this appeal.
5. After conducting a good faith search of the Agency’s files, I have made the determination that the Agency did not receive the request underlying this appeal.
6. The Agency actually received the request when we received the appeal documents in the above captioned matter.
7. The Agency processed the request and is preparing a response as required by the Right-to-Know Law.

Date: [DATE]

Signature: _____

[INSERT NAME OF OPEN RECORDS OFFICER]

Open Records Officer

[INSERT NAME OF AGENCY]

EXHIBIT 18

[INSERT AGENCY LETTERHEAD]

ATTESTATION THAT AGENCY PROVIDED ALL RESPONSIVE RECORDS

Name of Requester: [INSERT NAME OF REQUESTER]

Records Requested: [INSERT DESCRIPTION OF REQUEST]

Appeal Caption: [INSERT OOR CAPTION AND DOCKET NUMBER]

I, [INSERT NAME OF OPEN RECORDS OFFICER], hereby declare under the penalty of perjury, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

1. I serve as the Open Records Officer for [INSERT NAME OF AGENCY] (“Agency”) and am responsible for responding to Right-to-Know requests filed with the Agency.
2. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.
3. Upon receipt of the request, I conducted a thorough examination of files in the possession, custody and control of the Agency for records responsive to the request underlying this appeal, specifically ... **[Provide additional details describing the search(es) conducted by the Agency and the records or types of records that were reviewed. If e-mails or other electronically stored records were searched, identify the location(s) searched (i.e., individual e-mail accounts, agency servers, deleted e-mail servers, service providers, etc.)].**
4. Additionally, I have inquired with relevant Agency personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession, specifically ... **[Provide additional details identifying which third party was asked for records, whether the individual(s) or party(s) responded to the Agency’s inquiry and describe the content of the response(s). When applicable, provide additional information explaining why some or all of the records do not exist or why the agency does not possess the records.]**
5. After conducting a good faith search of the Agency’s files and inquiring with relevant Agency personnel, I identified all records within the Agency’s possession, custody or control that are responsive to the request and provided them to the requester ... **[Provide additional details identifying the date on which the records were provided to the requester and the method of production (i.e., were the records provided along with the Agency’s response to the request or**

mailed separately, did the requester retrieve the records from the Agency, were the records provided during the course of the appeal, etc.)].

Date: [Click here to enter a date.](#)

Signature: _____

[INSERT NAME OF OPEN RECORDS OFFICER]

Open Records Officer

[INSERT NAME OF AGENCY]

EXHIBIT 19

ATTESTATION IN SUPPORT OF EXEMPTION LOG

Name of Requester: [INSERT NAME OF REQUESTER]

Records Requested: [INSERT DESCRIPTION OF REQUEST]

Appeal Caption: [INSERT OOR CAPTION AND DOCKET NUMBER]

I, [INSERT NAME OF OPEN RECORDS OFFICER], hereby declare under the penalty of perjury, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

Exemption Log Information

1. I serve as the Open Records Officer for the [INSERT NAME OF AGENCY] (“Agency”).
2. I am responsible for responding to Right-to-Know requests filed with the Agency.
3. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.
4. Upon receipt of the request, I conducted a thorough examination of files in the possession, custody and control of the Agency for records responsive to the request.
5. Additionally, I have inquired with relevant Agency personnel and, if applicable, relevant third party contractors as to whether the requested records exist in their possession.
6. After conducting a good faith search of the Agency’s files and relevant agency personnel, I identified all records within the Agency’s possession, custody or control.
7. Each of the responsive records withheld are described in the preceding exemption log.
8. I have reviewed each of the records withheld and the description of record type, record date, number of pages, the subject matter, authors of the record, and the recipients of the records as described in the preceding exemption log are true and correct.

[Exemption #1]

[Include additional paragraphs to support each cited exemption]

Date: [DATE]

Signature: _____

[INSERT NAME OF OPEN RECORDS OFFICER]

Open Records Officer

[INSERT NAME OF AGENCY]