



pennsylvania
OFFICE OF OPEN RECORDS

Liz Wagenseller, Executive Director

Understanding the Right-to-Know Law

Office of Commonwealth Libraries

March 12, 2024

<https://openrecords.pa.gov>

[@LizOpenRecords](#)

[@OpenRecordsPA](#)

openrecords@pa.gov

(717) 346-9903

Overview of the Right-to-Know Law

Accessing Government Records

What kind of records do you want?

Federal Government:
[Freedom of Information Act \(FOIA\)](#)

Judicial Records:
[Common Law, PA Supreme Court Rule 509](#)

State & Local Records:
[Right-to-Know Law](#)

Access, Transparency, Good Government

The purpose of Pennsylvania's Right-to-Know Law is to give the public *access to public records*.



ACCOUNTABILITY

Real-Life Impact

Department of Labor admits it overcharged unemployed Pennsylvanians millions of dollars



1 of 3

Jelani Splawn / For Spotlight PA

The Department of Labor and Industry addressed the problem publicly after being contacted by Spotlight PA.



By **MORNING CALL** | Staff Report

PUBLISHED: July 9, 2021 at 8:13 p.m. | UPDATED: July 11, 2021 at 1:23 a.m.

**Is My Library Subject
to the RTKL?**

What is an agency?

Agencies are subject to the RTKL

Four types of agencies: Commonwealth, local, legislative, and judicial

Commonwealth
agencies include:

the Governor's Office,
Attorney General's Office,
PennDOT, Department of
Health state universities,
and community colleges

Local
agencies include:

Any political subdivision, intermediate unit,
charter school, cyber charter school or
public trade or vocational school.

Any local, intergovernmental, regional or
municipal agency, authority, council, board,
commission or similar governmental entity.

Are any libraries agencies?

Free Library of Philadelphia has an Open Records Officer posted so that the public can file RTKL requests.

Most libraries are found NOT to be agencies

- Walsh v. Carnegie Library (2009)
- Boyer v. Wyoming Free Library (2018)
- Bedillion v. Bucks County Free Library (2022)

However, we have also found that libraries can be agencies subject to the RTKL

- Longnaker v. Hellertown Area Library Assoc (2022) Borough's substantial financial and governmental control over the Library resulted in the Library being an agency. (*Court appeal pending*)
- The General Assembly likely anticipated that some libraries would be agencies: there is an exemption under the RTKL that covers library circulation records.

Is my library an agency?

The answer is... it depends. The determination of whether an entity is an “agency” under the Right-to-Know Law is a fact-specific inquiry.

- Libraries are not specifically delineated as a local agency under the RTKL; however, entities that are not specifically listed may still be a “similar governmental entity” and thus an agency.
- Commonwealth Court looks at three areas to determine if a nonprofit is local agency subject to the RTKL:
 1. The degree of governmental control
 2. The nature of the organization’s functions
 3. Financial control

Pysher v. Clinton Twp. Volunteer Fire Co., 209 A.3d 1116 (Pa. Commw. Ct. 2019)

#1

Degree of Governmental Control

We must look at “organizational structure, purposes, powers, duties and fiscal affairs.”

- Cooperation with federal, state, or local government is not enough to establish that an entity is controlled by government.
- How is the board of directors composed?
- Does the entity require a delegation of authority from government to act? Can the entity be disbanded by a political subdivision?
- The OOR would be required to look into the circumstances of your particular library.
 - Longnaker v. Hellertown Area Library Assoc: Borough had the power to appoint the majority of the Library’s Board (5 of the 7 Board members), and Library bylaws could only be adopted by the Board “with the approval of Hellertown Borough”

#2

Nature of Organization's Functions

We must look at whether the organization's functions are "a substantial facet of governmental activity."

- The functions need not be essential government functions
- Is the function one that would be a "core purpose" of a government agency?
- In Longnaker, the Library did not dispute the provision of library services constituted a "substantial facet of government activity"

#3

Nature of Organization's Functions

We must look at the degree of financial control.

- What is the degree of public funding compared to the degree of private funding?
- In Longnaker, Borough covered the Library's yearly operating costs, the Library budget was required to be presented to the Borough Council, and the Borough Council ultimately approved the yearly operating costs. Further, the Borough had the right to inspect the Library's finances, including the ability to independently audit.

How do I determine if my library is subject to RTKL?

Spoiler: We cannot tell you.

Here are your options:

- You can search the OOR's Final Determinations for cases involving other libraries. The search function can be found at <https://www.openrecords.pa.gov/Appeals/DocketSearch.cfm>, and under "Agency," type in "library."
- Consult the case law cited in this presentation.
- Talk to your solicitor.
- If you believe that it is unlikely that your library is an agency, you may rely upon that decision. You can always deny a RTKL request based on a good faith belief that your library is not an agency and go through the OOR appeal process. The OOR, and if necessary, a court will conduct fact-finding and make the determination.

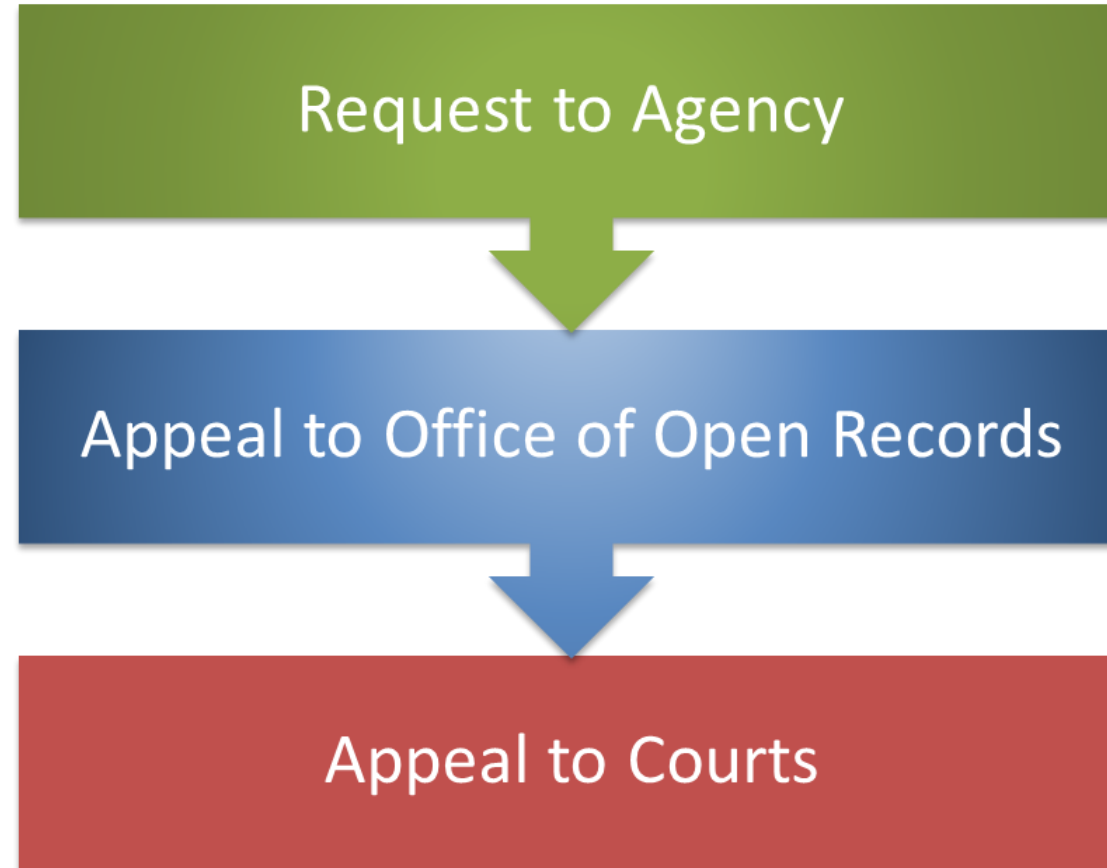
Why does it matter if my library is subject to the RTKL?

Being subject to the RTKL means that you have a variety of obligations and responsibilities.

- You must have an Open Records Officer and post that information on your website.
- You must adhere to the RTKL's deadlines and issue timely responses to RTKL requests.
- You are required to defend and support denials of RTKL requests before the OOR and possibly before an appellate court.
- All of your records are presumed to be a public record, and you have the burden of proving otherwise. This goes beyond financial records and includes all of your communications related to library business.

Basics of the Right-to-Know Law

Right-to-Know Law Basics



Records Take Many Shapes



What is Public?

Most **financial records** and **aggregated data**

Public data pulled from database

What is Not Public?

30 exemptions in RTKL + Other State and Federal Laws

Common RTKL exemptions:

- Certain personal identification information
- Insufficiently specific request
- **Internal**, pre-decisional deliberation
- Attorney-Client Privilege
- Does not exist
- Records that do not reflect agency business

Library Record Exemptions

RTKL

Section 708(b)(23) exempts from disclosure *“Library and archive circulation and order records of an identifiable individual or groups of individuals”*

State Statute

24 Pa.C.S. § 9375 – Privacy of circulation records

The RTKL is Not a Confidentiality Law

You Can Give Out Public Records

Post commonly sought records on your website

- Budgets
- Contracts
- Salaries
- Policies
- Purchasing Documents

Scranton Public Library



[MY LCLS](#)

[KIDS](#)

[TEENS](#)

[FIND](#)

[EVENTS](#)

[LIBRARIES](#)

[LIBRARY SERVICES](#)

[HOW TO HELP](#)

[FAQ](#)



GOVERNANCE INFORMATION AND POLICIES

Board of Trustees

Current Officers:

President: Ms. Sharon Quinn

Vice President: Ms. Karen Bazzari

Treasurer: Mr. Joseph X. Garvey

Secretary: Mr. Tim McCabe

2022 Meeting Agendas:

[December 2022](#)

2022 Meeting Minutes:

[January 2022](#) | [February 2022](#) | [March 2022](#) | [April 2022](#) | [May 2022](#) | [June 2022](#) | [July 2022](#) | [August 2022](#)

[September 2022](#) | [October 2022](#) | [November 2022](#) | [December 2022](#)

2023 Meeting Agendas:

[January 2023](#) | [February 2023](#) | [March 2023](#) | [April 2023](#) | [May 2023](#) | [June 2023](#) | [July 2023](#)

[August 2023](#) | [September 2023](#) | [October 2023](#) | [November 2023](#) | [December 2023](#)

2023 Meeting Minutes:

[January 2023](#) | [February 2023](#) | [March 2023](#) | [April 2023](#) | [May 2023](#) | [June 2023](#) | [July 2023](#) | August- Meeting canceled due to lack of quorum.

[September 2023](#) | [October 2023](#) | [November 2023](#) | [December 2023](#)

2024 Meeting Agendas:

[January 2024](#) | [February 2024](#)

2024 Meeting Minutes:

[January 2024](#)

[Scranton Public Library](#)

Chief Executive

Scott Thomas

570-348-3013

stthomas@albright.org

ByLaws

[SPL Board Bylaws](#)

Policies

[3D Printing](#) | [Collection](#) | [Community Space Pricing 9-26-22](#) | [Confidentiality of Library Records](#) | [Display and Exhibit](#) |

[Display of Non-Library Publicity Materials](#) | [Internet and WiFi Use](#) | [Library Resource Challenge Form](#) | [Local History Collection](#) |

[Media Digitization Release Form](#) | [Meeting Room](#) | [Mission and Vision](#) | [Non-Discrimination Policy](#) | [Programming Policy](#) | [Service Animal](#) |

[Social Media Use \(Patrons\)](#) | [Visitor Behavior](#)

Financial / Non-Profit Information

[501C3 Letter](#)

[2019 Form 990](#)

[2020 Form 990](#)

[2021 Form 990](#)

[2022 Form 990](#)

[2024 Operating Budget](#)

[12-31-22 Financial Statements](#)

Request: Emails from Board Member Over Certain Time Period

OOR GRANTED Appeal

Library response:
does not provide official
email addresses to Board
members, & Board member
in question didn't provide
us any of his emails



Library FAILED to proclaim
that it searched its own
email system for emails
to/from Board member



Thus OOR GRANTED access
and Library is required to
search its email accounts for
responsive records

Additional Resources



www.OpenRecords.pa.gov

- Citizens Guide
- Agency Guides
- Final Determinations and Key Court Decisions



Open Records Officer Guidebook



RA-DCOORTraining@pa.gov



@OpenRecordsPa



717.346.9903