

TRANSPARENCY IN PUBLIC SCHOOLS: THE SUNSHINE ACT AND RIGHT-TO-KNOW LAW

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Public K-12 school districts and charter schools are public governmental agencies that are required to conduct official business in public and make certain information available to the public. This fact sheet explains two important laws governing these transparency and accountability requirements.

The Pennsylvania Sunshine Act¹ requires that the public have access to the meetings of public agencies to promote transparency and accountability. It also establishes requirements for public notice and the opportunity to provide comments at meetings.² The law applies to state and local government agencies, including school districts, intermediate units, vocational schools, and charter schools as well as school boards, school authorities, or school governing bodies that take official action or render advice on matters of agency business.³

The Pennsylvania Right-to-Know Law⁴ (RTKL) guarantees public access to records and information about the operations and decisions of government entities. This law also applies to school entities and identifies procedures for requesting records that the public is legally entitled to access.⁵

You can find more related information about how boards operate in this [fact sheet about school boards' authority](#).

YOUR RIGHT TO TRANSPARENCY UNDER THE SUNSHINE ACT

WHAT IS CONSIDERED A MEETING OF THE SCHOOL BOARD THAT TRIGGERS THE SUNSHINE ACT?

A meeting is defined as “any prearranged gathering of an agency which is attended or participated in by a quorum of the members of the agency held for the purpose of deliberating agency business or taking official action.”⁶ The Office of Open Records notes that “the Sunshine Act applies any time a quorum deliberates agency business or takes official action, no matter the physical location of those deliberations or actions. The use of the term ‘prearranged’ does not allow agencies to thwart the intent of the Sunshine Act simply by holding an unscheduled discussion about agency business.”⁷ Any official action, including official actions based on discussions that might be held in an executive session, must be addressed in an open meeting.⁸

Official action, agency business, deliberation, and quorum defined. “Official action” is defined as recommendations made by an agency pursuant to statute, ordinance, or executive order; establishment of policies; decisions on agency business; and votes taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report, or order.⁹ Agency business is defined as “the framing, preparation, making or enactment of laws, policy or regulations, the

creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities.” Agency business does not include administrative action (e.g., carrying out previously approved official action or policies).¹⁰ Deliberation is defined as “discussion of agency business held for the purpose of making a decision.”¹¹ A majority, or at least five, board members participating in a meeting shall constitute a quorum.¹² The board can act only with a majority, no fewer than five members, participating.¹³

CAN SCHOOL BOARDS HOLD PRIVATE MEETINGS? WHAT RULES APPLY?

Yes, school boards can have a private meeting called a conference or an executive session so long as there is no deliberation or official action. Board members may participate in a “**conference**” that need not be open to the public, but deliberation of agency business cannot occur at a conference.¹⁴ A conference in this context is defined as “any training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.”¹⁵

“**Executive sessions**” are defined as a meeting from which the public is excluded, although the school board may admit persons necessary to carry out the purpose of the meeting.¹⁶ A school board may hold an executive session for one or more of the following purposes:

- (1) to discuss matters involving the employment, appointment, termination of employment, terms and conditions of employment, performance, promotion or disciplining of a specific employee or public officer;
- (2) to hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or labor relations;
- (3) to consider the purchase or lease of real property;
- (4) to consult with its attorney or other professional advisor about active or pending litigation;
- (5) to review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of confidential information such as an investigation by a state or federal agency;
- (6) to discuss, plan or review matters and records that are deemed necessary for emergency preparedness, security, or protection of public safety.¹⁷

Executive sessions must be announced at the open meeting occurring immediately before or immediately after the executive session, and the announcement must also disclose the purpose and scope of the session.¹⁸ School boards must identify the matters to be discussed in executive session with sufficient specificity to indicate a real, discrete matter – reporting only “legal matters” is insufficient.¹⁹ If you are not provided a specific matter, you can state on the record that you believe this is a violation of the Sunshine Act and submit a complaint (see more information about complaints below).

ARE DISCUSSIONS HELD OUTSIDE OF PUBLIC VIEW BY A SCHOOL BOARD A VIOLATION OF THE SUNSHINE ACT?

Sometimes. Courts have held that school boards may meet privately to **obtain** information, but they must avoid discussion of agency business and making decisions.²⁰ Closed gatherings may be

held “solely for the purpose of collecting information or educating agency members about an issue.”²¹

While the Sunshine Act allows school boards to hold executive sessions closed to the public, deliberations may not occur in those meetings.²²

A board member is permitted to discuss agency business with members of the public, whether in-person or by email or social media. However, board members are not permitted to deliberate except at a public meeting so board members exchanging opinions about an upcoming policy vote or encouraging other board members to vote in a particular way in an email discussion or via social media would violate the Sunshine Act.²³

ARE THERE REQUIREMENTS FOR PUBLIC NOTICE OF SCHOOL BOARD MEETINGS AND THEIR TOPICS?

Yes. The public must have notice of the time, place, and agenda for meetings in advance. The law requires meetings to be open to the public (with certain exceptions),²⁴ and mandates public notice of meetings, typically at least 24 hours in advance of a scheduled meeting.²⁵ The law guarantees the public’s right to attend meetings and access meeting records²⁶ and includes the following specific provisions:

- Both general action meetings and agenda meetings require posting an agenda at least 24 hours before the meeting.²⁷
- Committees of the school board that have been authorized by the board to take official action must comply with the same requirement that governs the school board.²⁸
- Notice must be posted at the agency’s principal office or the meeting’s location, and if the agency has a website, it must also be posted online.²⁹
- Courts have commonly held that meetings that are not properly announced to the public, even when open to the public, violate the Sunshine Act.³⁰

CAN A SCHOOL BOARD AMEND ITS MEETING AGENDA WITHOUT 24-HOUR NOTICE UNDER THE SUNSHINE ACT?

No, except if it is an emergency situation. As the Commonwealth Court of Pennsylvania has clarified, a public-school board can only amend its meeting agenda without 24-hour notice under specific conditions, such as emergencies, and must adhere to procedural requirement outlined in the Sunshine Act.³¹

CAN ANY MEMBER OF THE PUBLIC ATTEND A SCHOOL BOARD MEETING?

Yes. School board meetings are open to the public, except in limited circumstances such as an executive session discussed below.

CAN ANY MEMBER OF THE PUBLIC PROVIDE COMMENTS AT A BOARD MEETING?

Not necessarily. Under the Sunshine Act, a school board must provide a “reasonable opportunity” at advertised regular board meetings and special meetings for residents or taxpayers to comment on matters of concern, official action, or deliberation that are or may be before the school board prior to their taking official action.³² In addition, a school board may allow other members of the public to provide comments in accordance with school board policies. The board has the option to accept all public comments at the beginning of the meeting or provide sufficient time at a later

point in the meeting. A board may also defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.³³

Courts have held that school boards' restrictions on public comment must be viewpoint-neutral and evenly enforced. This means that the school board cannot restrict public comments simply because they disagree with the opinions or ideas of the speaker.³⁴ Reasonable and viewpoint-neutral restrictions on public comment include requiring speakers to sign up in advance, restricting speakers to 2-5 minutes, limiting overall time allotted to public comments, prohibiting disruptive conduct, and limiting comments to agenda items only.³⁵

Members of the public can ask questions of the school board during the public comment period, but the board is not required by law to provide an answer.

CAN COMMUNITY MEMBERS RECORD PUBLIC MEETINGS?

Yes. The Sunshine Act permits anyone attending a public meeting to record it. Section 711 of the Sunshine Act explicitly allows attendees to make both audio and video recordings of public meetings. However, agencies can establish reasonable rules and regulations regarding the conduct of these meetings.³⁶

CAN I OBJECT DURING A MEETING IF I BELIEVE THE SUNSHINE ACT IS BEING VIOLATED?

Yes. Anyone attending a public meeting may “respectfully object to a perceived violation of the Sunshine Act” at any time during the meeting by verbally objecting or asking for a “point of order” to clarify what action the board is or isn’t taking to understand whether the law is being violated. Members of the public may be asked to explain their perceived violation of the Sunshine Act.³⁷ This provides school board members with an opportunity to address and remedy the issue.

Courts often conclude that a subsequent public meeting “cured” a prior error of insufficient public notice or inappropriate private action that should have been public.³⁸

HOW CAN I CHALLENGE A VIOLATION OF THE SUNSHINE ACT?

If you believe the Sunshine Act has been violated, you may file a complaint in an appropriate court of common pleas in Pennsylvania. Such an action may be brought by any person where the school district is located or whose act complained of is located or where the act occurred.³⁹

A complaint must be filed within 30 days from the date of a meeting which was open to the public, or within 30 days from the **discovery** of an action that occurred at a meeting that was closed to the public. In the case of a meeting that was not open to the public, no legal challenge may be commenced more than one year from the date of that meeting.⁴⁰

A court may stop a challenged action from being implemented until a judicial determination is made regarding the legality of the meeting where the action was adopted. In its discretion, a court may stay the action, ultimately declare an official action at a meeting invalid, or uphold official actions taken at the meeting on the ground that the meeting did not violate the law.⁴¹ If a member of a school board is found to have intentionally violated the Sunshine Act, that person may be subject to conviction for a summary offense and ordered to pay a fine of \$100 plus the costs of prosecution.⁴²

YOUR RIGHT TO PUBLIC RECORDS & ACCOUNTABILITY UNDER THE RIGHT-TO-KNOW LAW

WHAT TYPES OF RECORDS ARE ACCESSIBLE UNDER THE RIGHT-TO-KNOW LAW?

The Right-to-Know Law (RTKL) provides access to a wide range of public records, including documents, papers, letters, maps, books, tapes, photographs, and other materials including data created or received by a government agency.⁴³

Importantly, the RTKL focuses on documents in the possession of a school district or other agency. It does not require a district to answer questions, nor does it require a district to create new documents that do not currently exist. Under Section 705 of the RTKL, when responding to a request, “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”⁴⁴

However, providing information from an agency database does **not** constitute the creation of a record. This includes pulling information from a database in the manner in which it currently exists.⁴⁵

WHAT RECORDS ARE CONSIDERED ‘PUBLIC’ UNDER PENNSYLVANIA’S RIGHT-TO-KNOW LAW?

A school district or charter school qualifies as a local agency subject to the RTKL.⁴⁶ Records in the possession of a district are presumed to be public, unless exempt under the RTKL or other laws or protected by a privilege, judicial order, or decree.⁴⁷ Certain records may be exempt from disclosure for reasons such as personal privacy, security, or confidentiality.⁴⁸ Records in draft form or which show internal, pre-decisional deliberations are specially exempt from disclosure.⁴⁹ Minutes of an executive session and any record of discussions held in executive session are exempt from disclosure.⁵⁰ Courts have discussed a variety of circumstances where records are not subject to public disclosure through a right-to-know (RTK) request due to privacy concerns, potential harm to a student, or confidentiality protections.⁵¹

Under the RTKL, a district is required to demonstrate, “by a preponderance of the evidence,” that its records are **exempt** from public access.⁵² Preponderance of the evidence has been defined as proof that leads the fact-finder to conclude that a contested fact is “more probable” than not.⁵³ The burden of proving a requested record or document does not exist is on the district or agency responding to the right-to-know request.⁵⁴

HOW CAN I REQUEST RECORDS UNDER THE RIGHT-TO-KNOW LAW?

A request for records must be submitted in writing to a school district’s Open Records Officer. Agencies have **five business days** to respond to a request.⁵⁵ At that time, a district may request a reasonable extension of time to provide responsive documents, depending on the scope and nature of the request.

ARE THERE ANY REQUIREMENTS OR GUIDELINES FOR REQUESTING RECORDS UNDER THE RTKL?

Yes. It is important that an RTK request identifies or describes the records sought with “sufficient specificity” to enable the district or other agency to ascertain which records are being requested. If a request is not specific enough, a district may legally decline to provide requested documents.

Courts have recognized a three-part balancing test to determine if a request is sufficiently specific.⁵⁶ First, the request must identify the “transaction or activity” of the district for which the record is sought.⁵⁷ Second, the request must identify a “discrete group of documents, either by type ... or by recipient.”⁵⁸ Finally, the time frame of the request should identify a finite period of time for which records are sought.⁵⁹

These factors are flexible, analytical elements.⁶⁰ Courts have applied these factors on a case-by-case basis.⁶¹ Significantly, while portions of a request may be insufficiently specific, other portions of the same RTK request may provide sufficient guidance to require a response.⁶²

ARE THERE ANY FEES ASSOCIATED WITH REQUESTING RECORDS?

Yes. Agencies may charge reasonable fees for providing access to public records. This may include fees for duplication, postage, and certification of records.⁶³ The Office of Open Records provides guidelines on the permissible fees that agencies can charge.⁶⁴

WHAT HAPPENS IF A DOCUMENT CONTAINS STUDENT SPECIFIC INFORMATION?

Student-specific education records are exempt from access under the Family Educational Rights and Privacy Act (FERPA).⁶⁵ However, FERPA expressly permits the provision of education records if the records can be “de-identified” through the removal of all personally identifiable information.⁶⁶ In such cases, a district may be ordered to disclose responsive documents.⁶⁷

Aggregate data does not qualify as containing personally identifiable information unless the identity of specific students could reasonably be ascertained. Aggregate data is defined by the RTKL as “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.”⁶⁸

WHAT IF THE AGENCY ONLY PRODUCES SOME DOCUMENTS REQUESTED?

If you receive only some of the requested documents, you have the right to appeal the decision to seek the remaining documents. If an agency denies a request in part, the requester can file an appeal with the Office of Open Records or the appropriate appeals officer as outlined below.⁶⁹

WHAT CAN I DO IF A REQUEST FOR RECORDS IS DENIED?

If a request for records is denied, the requester has the right to file an appeal with the Pennsylvania Office of Open Records (OOR) within **15 business days of the denial**. The appeal must state the grounds upon which the requester asserts that the record is a public record and address any grounds stated by the agency for delaying or denying the request. The appeal must include a copy of the original request and the agency’s responses. The OOR will acknowledge that appeal and offer the parties an option to engage in mediation to resolve the dispute. If the parties move forward, the district will respond to the requester’s appeal and explain its grounds for withholding the documents. OOR will then review the appeal and issue a decision.⁷⁰

An appeal from any denial of a RTK request may be sent by letter or email to:

Liz Wagenseller, Executive Director
Pennsylvania Office of Open Records
333 Market Street, 16th Fl.
Harrisburg, PA 17101

Via Electronic Filing and E-Mail openrecords@pa.gov

WHAT IS THE OFFICE OF OPEN RECORDS APPEAL PROCESS?

Once your appeal is filed with the Office of Open Records, you may choose one of the following options: (1) discuss your request with the RTK officer at your school district to determine whether they will provide the records at issue; (2) request mediation of your appeal; or (3) ask the assigned OOR appeals office to resolve the dispute, in which case the appeals office may or may not direct the school district to produce the records requested.

ARE THERE ANY PENALTIES FOR NONCOMPLIANCE WITH THE RIGHT-TO-KNOW LAW?

Yes. School boards that fail to comply with the Right-to-Know Law may face various penalties, including fines and court orders to produce requested records. In cases of willful or wanton disregard of the law, the court may impose civil penalties.⁷¹

HOW ARE THE SUNSHINE ACT AND RIGHT-TO-KNOW LAW ENFORCED?

Both the Sunshine Act and the Right-to-Know Law are enforced primarily through the courts. Any person who believes that a public school board has violated these laws can file a complaint in court. The courts have the authority to issue injunctions, impose penalties, and invalidate actions taken in violation of these laws.⁷²

WHAT RESOURCES ARE AVAILABLE FOR UNDERSTANDING AND COMPLYING WITH THESE LAWS?

The Pennsylvania General Assembly website provides the full text of the [Sunshine Act](#) and [Right-to-Know Law](#) along with amendments. The [Office of Open Records](#) offers guidance, templates for requesting records, and information on the appeal process. Organizations such as the [Pennsylvania Freedom of Information Coalition](#) also provide education materials.

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ 65 PA. C.S. §§ 701-716; See also *Citizens' Guide to the Right-to-Know Law and the Sunshine Act*, Pennsylvania Office of Open Records (2023), <https://www.openrecords.pa.gov/Documents/RTKL/CitizensGuide.pdf> (last visited Jul 26, 2024).

² *Id.* § 702.

³ *Id.* § 703.

⁴ 65 P.S. §§ 67.101-67.3104. See also *Right-to-Know Law Citizens' Guide*, Office of Open Records (2021), <https://www.openrecords.pa.gov/RTKL/CitizensGuide.cfm> (last visited Jul 25, 2024).

⁵ 65 P.S. § 67.101.

⁶ 65 PA. C.S. § 703.

⁷ PA Office of Open Records, Sunshine Act FAQ,

<https://www.openrecords.pa.gov/SunshineAct.cfm#:~:text=The%20definition%20of%20%22official%20action,business%20made%20by%20an%20agency>.

⁸ 65 PA. C.S. § 708.

⁹ *Id.* § 703.

¹⁰ *Id.*

¹¹ *Id.*

¹² 24 P.S. § 4-422; PA Office of Open Records, Sunshine Act FAQ, <https://www.openrecords.pa.gov/SunshineAct.cfm>.

¹³ *Id.*

¹⁴ 65 PA. C.S. § 707(b).

¹⁵ *Id.* § 703.

¹⁶ *Id.* § 708.

¹⁷ *Id.*

¹⁸ 24 P.S. § 4-425(b). 65 Pa. C.S.A. § 708(b). See *Butler v. Indian Lake Borough (In re Appeal of Lyons)*, 14 A.3d 185 (Pa. Commw. 2011).

¹⁹ 24 P.S. § 4-425(b); *Reading Eagle Co. v. Council*, 156 Pa. Commw. 412, 416-17 (Pa. Cmmw. Ct. 1993) (finding that when an executive session is called, the Sunshine Act requires the agency to describe with specificity what is being discussed, and “legal matters” is insufficient).

²⁰ See e.g., *Dusman v. Chambersburg Area Sch. Dist.*, (Pa. Commw. 2014) (holding executive sessions may be used to discussed privileged matters but official action must be brought to public meeting); *Smith v. Twp. of Richmond*, 82 A.3d 407 (Pa. 2013)(holding that factfinding and information gathering alone may be private).

²¹ *Id.* at 223 (“[T]he Supervisors' four closed-door gatherings did not violate the [Sunshine] Act because they were held for informational purposes only and did not involve deliberations”).

²² See 65 PA. C.S. § 707 (a-c).

²³ Office of Open Records, Sunshine Act FAQ,

<https://www.openrecords.pa.gov/SunshineAct.cfm#:~:text=The%20definition%20of%20%22official%20action,business%20made%20by%20an%20agency>.

²⁴ 65 PA. C.S. § 707 (a-c). See also *McCord v. Pa. Gaming Control Bd.*, 9 A.3d 1216 (Pa. Commw. 2010), *Riverwalk Casino v. Pa. Gaming Control Bd.*, 926 A.2d 926 (Pa. 2007), *Baribault v. Zoning Hearing Bd. of Haverford*, 236 A.3d 112 (Pa. Commw. 2020).

²⁵ 65 PA. C.S. § 709(a-b). See *Coleman v. Parkland Sch. Dist.*, 305 A.3d 238 (Pa. Commw. 2023) (discussing the requirements for public notice of meetings under Section 709, emphasizing that an agency must give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance and must also provide notice of each special meeting or rescheduled regular or special meeting at least 24 hours in advance).

²⁶ 65 PA. C.S. § 709(c).

²⁷ See *id.* § 709. See also *id.* § 703 for the definition of official action. “Agency is defined as [t]he body and all committees thereof authorized by the body to take official action or render advice on matters of agency business...” *Coleman v. Parkland Sch. Dist.*, 305 A.3d 238 (Pa. Commw. 2023) (holding that a school board's reaffirmation vote at a properly noticed meeting cured a prior Sunshine Act violation; trial court did not err as the district's legal challenge was not in willful disregard of the law).

²⁸ *Id.*

²⁹ 65 PA. C.S. § 709.

³⁰ *Bensalem Twp. Sch. Dist. v. Gigliotti Corp.*, 415 A.2d 123 (Pa. Commw. 1980). See *City of Harrisburg v. Pickles*, 156, 492 A.2d 90 (Pa. Commw. 1985) (affirming that lack of notice makes the meeting private and thus the decisions made were null and void). *Bianco v. Robinson Township*, 556 A.2d 993 (Pa. Commw. 1989) (affirming that a public meeting held to ratify actions taken in a previous meeting rendered arguments about Sunshine Act violations moot, as the public meeting satisfied statutory requirements). *Frankenfield v. Saucon Valley Sch. Dist.* 324 C.D. 2009, 2010 WL

9518758 (Pa. Commw. 2010) (holding that actions taken at meetings due to advertisement deficiencies were invalid only when the meetings were not properly advertised).

³¹ *Coleman v. Parkland Sch. Dist.*, 305 A.3d 238 (Pa. Commw. 2023), appeal denied. See 65 PA. C.S. § 709. See also *id.* § 703 (definition of official action).

³² 65 P.S. § 710.1.

³³ *Id.*

³⁴ *Madison Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm'n*, 429 U.S. 167 (1976) (holding First Amendment protections apply to speaking at public school board meetings); *Marshall v. Amuso*, 571 F. Supp.3d 412 (E.D. Pa. 2017) (“[V]iewpoint discrimination ... is presumed impermissible when directed against speech otherwise within the forum’s limitations.”) (citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829-30 (1995)).

³⁵ 65 Pa. C.S. 710; *Sklaroff v. Abington Sch. Dist.*, No. 2134 C.D. 2016, 2017 WL 4582638, at *3 (Pa. Cmwlth. 2017) (holding policy limiting speakers to 3 minutes and to agenda items only, not violative of the Sunshine Act); *Duff v. City of Philadelphia*, 2015 WL 4644138 (E.D. Pa. 2015) (holding that policy limiting public comment to agenda items did not violate First Amendment because it was narrowly tailored to serve an important government interest); *Alekseev v. City Council of Philadelphia*, 976 A.2d 1253 (Pa. Cmwlth. 2009) (“[L]imiting public comment to the subject of the proposed legislation under consideration by the committee is patently reasonable and in no way violates the [Sunshine] Act.”).

³⁶ 65 PA. C.S. § 711.

³⁷ *Id.* § 710.1 (c). The statute also clarifies that while objections can be raised at any time, the proper order of the meeting should be maintained; this suggests that while you can object, it should be done in a manner that respects the meeting’s agenda and structure. *Harper v. Lancaster Cnty. Comm’rs*, 2023 Pa. Dist. & Cnty. Dec. LEXIS 1821.

³⁸ See, e.g., *Picone v. Bangor Area Sch. Dist.*, 936 A.2d 556 (Pa. Commw. Ct. 2007) (“[T]his Court has repeatedly held that official action taken at a later, open meeting cures a prior violation of the Sunshine Act.”).

³⁹ 65 PA. C.S. § 715. Commonwealth Court has original jurisdiction of actions involving state agencies and courts of common pleas have original jurisdiction of actions involving other agencies.

⁴⁰ *Id.* § 713.

⁴¹ *Id.*

⁴² *Id.* § 714.

⁴³ *Id.* § 67.102.

⁴⁴ 65 P.S. § 67.705; see also *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010) (holding that an agency cannot be made to create a record that does not exist).

⁴⁵ See *Commonwealth v. Cole*, 52 A.3d 541, 549 (Pa. Commw. Ct. 2012) (“[D]rawing information from a database does not constitute creating a record under the Right-to Know Law”); see also *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38, *21 (Pa. Commw. Ct. 2012) (“[P]ulling information from a database is not the creation of a record”). “To hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases.” *Cole*, 52 A.3d at 549. “An agency need only provide the information in the manner in which it currently exists.” *Id.* at 547. An agency is not required to create a list or spreadsheet containing the requested information; however, “the information...must simply be provided to request[e]rs in the same format that it would be available to agency personnel.” *Id.* at 549, n.12.

⁴⁶ 65 P.S. § 67.302.

⁴⁷ *Id.* § 67.305.

⁴⁸ See 65 PA. C.S. § 67.708 (for exemptions).

⁴⁹ See §§ 708(b)(9) and (10) of the RTKL. 65 P.S. § 67.708(b)(9); *id.* § 67.708(b)(10).

⁵⁰ 65 P.S. § 67.708(b)(21)(ii).

⁵¹ See e.g., *Pennsylvania State Educ. Ass’n ex rel. Wilson v. Com., Dep’t of Cmty. & Econ. Dev., Office of Open Records*, 2 A.3d 558 (Pa. 2010) (holding that disclosure of a home address constituted a substantial and demonstrable risk of physical harm to or the personal security of an individual). *Wyo. Borough v. Boyer*, 299 A.3d 1079 (Pa. Commw. 2023) (elaborating on the definition of “public record” under the RTKL, emphasizing that a public record must be a record of a Commonwealth or local agency that is not exempt under the law and underscoring the importance of liberal construction of these terms to promote access to government information).

⁵² 65 P.S. § 67.708(a)(1)

⁵³ *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

⁵⁴ *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

⁵⁵ See 65 P.S. § 67.703-67.901 (for detailed procedures). See also How to File a Records Request, Office of Open Records - How to File a Request, <https://www.openrecords.pa.gov/RTKL/HowToFile.cfm> (last visited Jul 26, 2024).

⁵⁶ *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

⁵⁷ *Id.* at 1125 (quoting 65 P.S. § 67.102).

⁵⁸ *Id.* (quoting *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)).

⁵⁹ *Id.* at 1126 (citing *Carey*, *supra*).

⁶⁰ *Pa. Dep't of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022).

⁶¹ *See, e.g., Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (concluding that request which did not identify specific individuals, email addresses, or even departments, but requested any applicable emails sent from the County's domain to four other domains was insufficiently specific); *Pa. Dep't of Educ.*, 199 A.3d at 1124-126 ("request for broad category of documents, such as all records, may be sufficiently specific if confined to a particular recipient or recipients); *see also Carey*, 61 A.3d at 372 (concluding that the scope of the request must identify "a discrete group of documents, either by type ... or by recipient"); *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 179 (Pa. Commw. Ct. 2019) ("the request is obviously sufficiently specific because the [borough] has already identified potential records included within the request.").

⁶² *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting "the valid part of the request was included in a laundry list of requested materials"); *Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (finding the portion of a request seeking "manuals" to be sufficiently specific, and the portion seeking "any and all records" to be insufficiently specific).

⁶³ *See* 65 P.S. § 67.1307 for information on fees.

⁶⁴ *Official RTKL Fee Schedule*, OFF. OF OPEN RECORDS, <https://www.openrecords.pa.gov/RTKL/FeeStructure.cfm> (last visited Jul 26, 2024).

⁶⁵ 20 U.S.C. § 1232g.

⁶⁶ 34 C.F.R. § 99.31(b)(1) ("An educational agency...may release the records or information without the consent required by § 99.30...after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable...").

⁶⁷ *Bell v. Central Susquehanna Intermediate Unit # 16*, OOR Dkt. AP 2022-1989, 2022 PA O.O.R.D. LEXIS 2549 (ordering disclosure of responsive aggregated data sought, as the agency had presented no rationale for withholding the information pursuant to FERPA).

⁶⁸ 65 P.S. § 67.102. A request which facially seeks aggregated data and categories may still be subject to exemption if the record shows that the categories of data are so small that a reasonable person could still cross-reference them to identify individuals. *Conroy-Smith v. Haverford Twp. Sch. Dist.*, OOR Dkt. AP 2021-1182, 2021 PA O.O.R.D. LEXIS 1497.

⁶⁹ *Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. Supreme 2013); *Haverstick v. Pa. Office of AG*, 273 A.3d 600 (Pa. Commw. 2022)(the requester successfully appealed the partial denial of his request, challenging the withholding of certain documents); *McClintock v. Coatesville Area Sch. Dist.*, 74 A.3d 378 (Pa. Commw. 2013)(the requester appealed the partial denial of his request for documents related to a charter school, resulting that a deemed denial is not a deemed waiver of District to assert reasoning for denial).

65 P.S. § 67. 1302 (provides that within 30 days of the mailing date of the final determination of the appeals officer, a requester may file a petition for review with the court of common pleas for the county where the local agency is located, ensuring that requesters have a legal avenue to challenge partial denials).

See How to File an Appeal - Right to Know, OFF. OF OPEN RECORDS,

<https://www.openrecords.pa.gov/Appeals/HowToFile.cfm#:~:text=The%20Best%20Way%20to%20Submit%20an%20Appeal%20to%20the%20OOR&text=To%20file%20an%20appeal%20under,%20respond%20at%20all> (last visited Jul 26, 2024).

⁷⁰ *See* 65 P.S. § 67.1101 (for whole appeal process). *See How to File an Appeal - Right to Know*, OFF. OF OPEN RECORDS,

<https://www.openrecords.pa.gov/Appeals/HowToFile.cfm#:~:text=The%20Best%20Way%20to%20Submit%20an%20Appeal%20to%20the%20OOR&text=To%20file%20an%20appeal%20under,%20respond%20at%20all> (last visited Jul 26, 2024).

See Township of Worcester v. Commonwealth, 2015 Pa. Dist. & Cnty. Dec. LEXIS 515 (discusses the jurisdictional aspects of the RTKL, particularly the process for appealing decisions of the Office of Open Records to higher court).

⁷¹ *See* 65 P.S. §§ 67.1304-1305 (the penalties for non-compliance with Pennsylvania's Right-to-Know Law can include civil penalties up to \$1, 500 for bad faith denials, additional daily penalties for non-compliance with court orders, and the awarding of attorney fees and costs if bad faith is determined). *See also Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161 (Pa. Commw. 2018); *Office of the DA of Phila. v. Bagwell*, 155 A.3d 1119 (Commw. 2017); *In re Phila. Dist. Attorney's Office*, 2016 Phila. Ct. Com. Pl. LEXIS 55.

⁷² *See* 65 P.S. § 67.1301-1310.