

<p><b>Commonwealth of Pennsylvania</b></p>  <p><b>Pennsylvania Board of Probation and Parole</b></p>	<p><b>Volume III Chapter 1</b></p> <p><b>Procedure 1.05.01</b></p>	<p><b>Replaces No. 9.0 effective 04/01/03 01/01/09</b></p>
<p><b>Chapter Title</b> <b>GENERAL, POLICY, ACCREDITATION</b></p>		<p><b>Date of Issue</b> <b>09/09/09</b></p>
<p><b>Subject</b> <b>RIGHT TO KNOW LAW POLICY AND PROCEDURE</b></p>		<p><b>Effective Date</b> <b>9/10/09</b></p>

## I. AUTHORITY

The Chairman of the Board is granted the authority to “direct the operations of the Board and fulfill the functions established by th[e] act . . . including organizing, staffing, controlling, directing, and administering the work of staff.”<sup>1</sup> Additionally, the Board provides administrative support to the Sexual Offenders Assessment Board (SOAB), the Office of the Victim Advocate (OVA) and the Firearm Education and Training Commission (FETC). This policy is promulgated in accordance with the Right to Know Law (RTKL), Act 2008-03 P.L., 65 P.S. §§ 67.101-67.3104, enacted on February 14, 2008, effective in relevant part on January 1, 2009, and pursuant to Management Directive 205.36, as amended, effective January 1, 2009, which is incorporated herein by reference, and made a part of this policy.

## II. PURPOSE

This policy establishes the procedures for requests for records under the RTKL regarding the (1) Board of Probation and Parole (Board); (2) Sexual Offenders Assessment Board (SOAB); (3) Office of the Victim Advocate (OVA); and (4) County Probation and Parole Officers’ Firearm Education and Training Commission (FETC), and outlines actions to be used to respond to request for information. These will collectively be referred to as the “Board” within this policy.

## III. APPLICABILITY

This policy is applicable to the general public as well as all Board, SOAB, OVA and FETC employees, contract personnel, and visitors.

## IV. DEFINITIONS

When used in this policy, the terms defined shall have the meanings given to them in the: (1) RTKL, Act 2008-03 P.L., 65 P.S. §§ 67.101-67.3104, enacted February 14, 2008; and (2) Management Directive 205.36 Amended, Right-to-Know-Law, issued November 20, 2008.

## V. POLICY

It is the policy of the Board to ensure that information is released in accordance with

<sup>1</sup> Act of 1941, P.L. 861, No. 323 § 3 as amended Oct. 9, 1986, P.L. 1424, No. 134.

applicable law.

## VI. PROCEDURE

### A. Requests

1. RTKL requests may be made on the form available at the website of the Office of Open Records at: <http://openrecords.state.pa.us>, or the form at the website of the Board at <http://www.pbpp.state.pa.us/pbpp/site/default.asp>. A copy of the form is attached as Appendix A.
2. Written requests using the RTKL request form, or through other legible means, must be:
  - a. Addressed to the Agency Open Records Officer ("AORO") at: Sherry Tate, Pennsylvania Board of Probation and Parole, Office of Policy, Legislative Affairs and Communications, 1101 South Front Street, Suite 5100, Harrisburg, PA, 17104-2517, [RA-pbpprighttoknow@state.pa.us](mailto:RA-pbpprighttoknow@state.pa.us), fax: 717-705-1774.
  - b. Identify a name and address (electronic, or P.O. Box, street name and number with apartment number-if any, city, state and zip code) to which the Board should address its response;
  - c. Indicate that the request is being made pursuant to the RTKL;
  - d. Be submitted in person, by email, fax or U.S. mail;
  - e. Be sufficiently specific to enable the Board to ascertain which records are being requested; and
  - f. Be from a person who is a legal resident in the United States.
3. While verbal requests may be fulfilled by the Board, the requester cannot pursue the relief and remedies provided under the RTKL unless the request is in writing.
4. The regular business hours of the RTKL office are 8:30 a.m. to 4:45 p.m. Monday through Friday unless it is a state holiday or the state is closed due to extraordinary circumstances. Any RTKL request received by the Board AORO after the close of regular business hours or when the state is closed due to extraordinary circumstances shall be deemed to have been received by that office on the following business day.
5. RTKL requests received by the Board will be considered "public record" information by the Board, and such requests may be made available for public access through its website.

### B. Responses

1. Unless a longer period of time is needed and communicated to the requester by an "interim response" (discussed below), the RTKL requires that the Board respond to a RTKL request within five business days. For purposes of determining the end of the five business day period, the day that a RTKL request is received is not counted. The first day of the five business day period is the Board's next business day.
  - a. The AORO may respond by providing a requester with access to inspect a record electronically or as otherwise maintained by the Board, or either:
    - 1) Providing access in the offices of the Board, if agreed to by the requester.
    - 2) Sending a copy to the requester, or
    - 3) Notifying the requester that the record is available through publicly accessible electronic means.
  - b. If the requester writes to the Board within 30 days that the requester is unable or unwilling to access the information electronically, the records must be provided in paper format upon payment.
  - c. Each of these options is a "response" for purposes of the RTKL, as is the Board's written notice to the requester granting, denying, or partially granting and partially denying access to a record.
  - d. The Board may send written responses to requesters by:
    - 1) United States Mail,
    - 2) By hand (in person or by delivery service),
    - 3) Facsimile
    - 4) Email
2. Interim Responses
  - a. The Board must provide a final response to a RTKL request within 5 business days unless one or more specific conditions are satisfied and the AORO gives the requester written notice that additional time will be required. That notice is referred to as an "interim response."
  - b. The AORO may send an interim response if any of the following apply:
    - 1) The RTKL request requires redaction of a public record;
    - 2) The RTKL request requires retrieval of a record from a remote location;

- 3) A response within the 5 business day period cannot be accomplished due to bona fide staffing limitations (which limitations must be specified in the interim response);
- 4) A legal review is necessary to determine whether the record requested is subject to access under the Act;
- 5) The requester has not complied with the Board's policies regarding access to public records;
- 6) The Board will send an interim response when the estimated fee for responding to the request is in excess of \$100. If the estimated payment is timely received, the Board will proceed to:
  - i. Make a final determination as to what records, if any, are public records under the RTKL
  - ii. Begin a search and retrieval of those records
  - iii. Perform any required any redaction
  - iv. Advise the requester, within 30 days, as to a date by when any responsive public records will be produced.

Failure to make an estimated payment by the date required by the Board in its interim response will result in the request being deemed withdrawn. For more information on payment requirements, see F. Fees, page 7, *infra*.

- 7) The extent or nature of the request precludes a response within the required time period.
- c. An interim response must be:
- 1) Sent to the requester on or before the last day of the 5 business day period (not counting the date of receipt, weekends or when the state government is closed);
  - 2) State that the request is being reviewed and the reason for the review;
  - 3) Provide an estimate of applicable fees owed when the record becomes available; and
  - 4) State a reasonable date that a response is expected to be provided.
- d. The interim response date must not be more than 30 calendar days from the end of the 5 business day period.
- e. If the date of an expected response is in excess of 30 days (in addition to the five days allowed ), the request will be deemed denied unless the requester has agreed in writing to the date specified in the notice.

### 3. Final Responses

- a. There are 3 possible responses:
  - 1) Granted.
  - 2) Denied.
  - 3) Granted in part and denied in part
- b. The failure to make a timely response is deemed to be a denial.
- c. Non-production of records due to the fact that a good faith search by the Board does not produce any responsive records is not a denial of access.
- d. If a written request is denied in whole or in part, the Board will issue a final written response that will include:
  - 1) An explanation of the procedure for the requester to appeal, if the requester chooses to do so.
  - 2) The specific reasons for the denial, including a citation of supporting legal authority.
  - 3) If the denial is the result of a determination that the record requested is exempt from disclosure, the specific reasons for the Agency's determination shall be included.

#### C. Redaction

1. The Board will not deny access to a record based upon the fact that portions of the record are not public records and, as a result, not subject to disclosure.
2. The Board will redact the portions that are not public records and produce the portions that are public records.

#### D. Access

1. The Board may provide a requester with access to inspect a record electronically or as otherwise maintained by the Board, either by:
  - a. Providing access in the offices of the Board, if agreed to by requester.
  - b. Sending a copy to the requester;
  - c. Notifying the requester that the record is available through publicly accessible electronic means (if the requester writes to the Board within 30 days that the requester is unable or unwilling to access the information electronically, the records must be provided upon payment) including, but not limited to:

- 1) The Board's website at <http://www.pbpp.state.pa.us/pbpp/site/default.asp>
  - 2) The Sexual Offenders Assessment Board's Website at <http://www.meganslaw.state.pa.us/soab/site/default.asp>
  - 3) The Office of the Victim Advocate's Website at <http://www.pbpp.state.pa.us/ova/site/default.asp>
  - 4) The Firearm Education and Training Commission's Website at <http://www.fetc.state.pa.us/fetc/site/default.asp>
  - 5) The Pennsylvania Treasury Department, Pennsylvania Contract E-Library database at website at <http://www.patreasury.org/Right-to-Know>.
  - 6) The Department of General Services which publishes solicitations, awards and contracts on its website at <http://www.emarketplace.state.pa.us>.
2. The Board has the discretion to determine the building(s) and room(s) that will be used to provide a requester with access to the Board's public records. The selection of buildings and rooms for access to the Board's public records is a matter within the discretion of the AORO.
  3. The Board will provide a public record to a requester in the medium requested if the record exists in that medium. Otherwise, the public record must be provided in the medium in which it exists. If a public record only exists in one medium, the Board is not required to convert that public record to another medium, except that if the public record is only available in an electronic form, the Board must print it out on paper if the requester so requests.
  4. The Board is not required to create a public record that does not already exist, nor is it required to compile, maintain, format or organize a public record in a manner in which the Board does not currently do so.
- E. Duplication of Public Records.
1. The Board may either make copies itself, or in its discretion, allow the requester to bring necessary equipment to make its own copies.
  2. The Board may make its duplication equipment available to a requester, but require that:
    - a. The requester operate the equipment;
    - b. Assigned Board staff make the duplications; or

- c. Contract for duplication services and require the requester pay the applicable rate.

## F. Fees

### 1. Office of Open Records

- a. The Office of Open Records has the authority under the RTKL to establish two fees for Commonwealth Agencies:
  - 1) Duplication, 65 P.S. § 67.1307 (b); and
  - 2) Enhanced Electronic Access (an agency may establish user fees, subject to approval by the Office of Open Records). 65 P.S. § 67.1307 (e).
- b. The fees for duplication are established by the Office of Open Records, as posted on its website at <http://openrecords.state.pa.us>.
- c. Unless otherwise directed by statute, the Board will charge \$.25 per page for duplication, although on-site publication may be at a reduced rate of \$.15, at the discretion of the Board.
- d. Pursuant to the Office of Open Records policy, the Board may waive duplication fees for 20 pages or less. Duplication charges are to be paid for any duplication in excess of 20 pages.

### 2. The Board

- a. Photocopies: one "photocopy" is either a single sided copy or one side of a double sided copy.
  - 1) 1 side of a standard 8.5" x 11" paper (less than 20 copies)-No charge
  - 2) 1 side of a standard 8.5" x 11" paper (more than 20 copies)- \$.25 per page.
- b. Media
  - 1) CD Rom-\$1.00 per CD
  - 2) Cassette Tape - \$1.00 per tape
  - 3) Other-Actual cost
- c. Postage
  - 1) The Board will charge the actual cost for postage, facsimile/microfiche or other media, as well as for specialized documents, except that postage fees will be waived for postage that costs under \$1.00.

- d. Certified Records-\$1.00 per certified record
- e. The agency does not have a fee for enhanced electronic access.
- f. Special rules apply to fees for transcripts of administrative proceedings:
  - 1) Prior to adjudication becoming “final, binding and non-appealable,” transcripts may be requested through the Board’s court reporting service; however the Board’s court reporting service is permitted to charge the regular fee to the requester for providing copies of transcripts.
  - 2) Following an adjudication becoming “final, binding, and non-appealable,” a requester must forward a blank cassette tape or \$1 to the Board and the Board will duplicate its tape of the proceedings. The Board is prohibited by Copyright Laws from duplicating any copies of transcripts it may have since ownership of such transcripts rests with a third party.
- g. Reasonable and Necessary Incurred Costs
  - 1) As expressly provided by 65 P.S. § 67.1307 (g), the Board has the authority to charge requesters reasonable fees for necessarily incurred cost.
  - 2) The Board will determine and charge such fees on a case by case basis.
- h. No charge shall be made for the Board or legal review of the record to determine whether the requested records are public records that are subject to production.
- i. If the estimated fees that are required to fulfill the RTKL request exceed \$100, the requester must pay the estimated amount in advance, whether by certified check or by ordinary check, which must first have cleared to be considered received by the Board. The demand for prepayment will specify a reasonable period of time in which the requester must make such a payment. Failure to make the estimated payment by the date required by the Board in its interim response will result in the request being deemed withdrawn.
- j. All applicable fees must be paid in order to receive access to the record requested. 65 P.S. §67.901. Any requester who has unpaid amounts outstanding to the Board or any agency under the Governor’s jurisdiction, in relation to RTKL requests where production was made by any such agency, will not be granted access to records under the RTKL until such prior amounts due have been paid in full.
- k. When an estimated fee was not required to be paid because the estimate was \$100 or less, but actual fees are over \$100 or where the fee was under \$100, the Board has the discretion to produce the

records and invoice for the amount due or to require payment prior to production.

#### G. Appeals

1. When a request is denied or deemed denied, whether in whole or in part, the requester may file an appeal with the Office of Open Records, where it will be assigned to an Appeals Officer.
2. This appeal must be filed within 15 business days of the denial or deemed denial.
3. The appeal must state:
  - a. The grounds upon which the requester asserts that the record is public, and
  - b. Should address any grounds stated by the Board for delaying or denying the request.
4. The appeal shall be sent to the OOR at the address set forth below and simultaneously to the agency AORO, in the same manner as the appeal is sent to the OOR (email, fax, mail or hand delivery) with:
  - a. The agency Response
  - b. The RTKL request
  - c. The appeal form that is available on the OOR website at <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

The Commonwealth Office of Open Records  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225  
Phone: 717-346-9903  
Email: [openrecords@state.pa.us](mailto:openrecords@state.pa.us)
5. Other than the Board or the requester, a person or entity with a direct interest in the record that is subject to an appeal, has 15 days following actual knowledge of the appeal, but no later than the date the Appeals Officer issues an order, to file a written request to provide information or to appear before the Appeals Officer in support of the requester's or the Board's position in the appeal. The Appeals Officer may, but need not, grant the request.
6. For further information on appeals, it is suggested that the requester review the website of the Office of Open Records.

#### VII. SUSPENSION DURING AN EMERGENCY

This policy and procedure may be suspended during an emergency for the PBPP at the sole discretion of the Chairman, or in the Chairman's absence, the Director of the Office of Policy, Legislative Affairs, and Communications.

#### VIII. RIGHTS UNDER THIS PROCEDURE

This policy and procedure does not create rights under the law.

#### IX. RELEASE OF INFORMATION AND DISTRIBUTION OF PROCEDURE

This policy and procedure does not contain information that impacts the security of the Board staff or parolees and will therefore be released to the public.

#### X. CROSS REFERENCES

##### A. Statutes

###### State

1. Act of 1941, P.L. 861, No. 323 § 3, as amended Oct. 9, 1986, P.L. 1424, No. 134 (61 P.S. § 331.3).
2. Pennsylvania Right-to-Know Law, Act 2008-03 P.L., 65 P.S. §§ 67.101-67.3104

##### B. PBPP Policies and Procedures

Communications, Release of Information, Procedure 1.04.01, issued September 5, 2008, effective December 19, 2008.

##### C. Management Directives

205.36 Amended, Right-to-Know Law, issued November 20, 2008, effective January 1, 2009.