

STATE OF PENNSYLVANIA
COMMONWEALTH COURT

OR

[IN THE COURT OF COMMON PLEAS]
OF _____ COUNTY]

In the Matter of

[Student Name] :
Petitioner, : RIGHT TO KNOW APPEAL
v. : NO.: _____
[Pennsylvania State Agency] :
Respondent. :

**PETITION FOR REVIEW OF FINAL DETERMINATION
OR
MOTION FOR ENFORCEMENT OF FINAL DETERMINATION ISSUED [DATE]**

This is a lawsuit seeking to enforce the right to inspect public data pursuant to the Pennsylvania Right-to-Know law, 65 P.S. §67.101 *et seq.* Petitioner [Student Name], a Pennsylvania journalist, requested data from Respondent, [Pennsylvania State Agency], relevant to [description of issue]. [Describe the issue's importance]. Through [his/her] reporting, [Student Name] seeks to inform the public about [description of events that caused the issue].

[If a favorable Final Determination has been issued but no documents have been produced:
[#] months after [Mr./Ms.] [Student Last Name] first requested the public data necessary for [his/her] reporting, [and [length of time] after receiving a Final Determination ordering production of the requested documents], Respondent [Pennsylvania State Agency] continues and without lawful justification to withhold data that indisputably are subject to timely production under the Pennsylvania Right-to-Know Law. This Court's intervention, and the sanction of an award of attorney fees and costs, are consequently required.

JURISDICTION AND VENUE

[For Commonwealth Court] Jurisdiction and venue arise under the authority vested in this Court by virtue of 65 P.S. §67.1301(a).

[For Court of Common Pleas] Jurisdiction and venue arise under the authority vested in this Court by virtue of 65 P.S. §67.1302(a).

PARTIES

1. Petitioner [Student Name] is a journalist, and was [title] of the student newspaper at [college or university], [newspaper name], during most of the events at issue in this lawsuit. [Description of Petitioner's work as a journalist]. [Mr./Ms.] [Student Last Name] is a resident of [Name] County, Pennsylvania.

2. Respondent [Pennsylvania State Agency] is the [description of agency's role in state, including why it maintains the relevant data]. The [Pennsylvania State Agency] is the legal custodian of the data at issue in this lawsuit. Respondent [Pennsylvania State Agency] maintains its primary place of business at [address], is a legal resident of [Name] County, Pennsylvania, and is amenable to service of process in [Name] County.

FACTUAL ALLEGATIONS

1. The [Pennsylvania State Agency] is an agency of the State of Pennsylvania, and as such, is governed by the public disclosure requirements of the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 *et seq.*

2. [Agency Employee] is the [Open Records Officer] at [Pennsylvania State Agency]. Under the Law, he is designated as a responsible authority to receive and respond on behalf of the [Pennsylvania State Agency] to requests for public data made pursuant to the Pennsylvania Right-to-Know Law.

[Mr./Ms.] [Student Last Name]'s Right-to-Know Request to [Pennsylvania State Agency]

3. On [date], Petitioner submitted a written Right-to-Know request to [Agency Employee] seeking the disclosure of [#] categories of public data. (A copy of Petitioner's request letter is attached to this Petition as Attachment [letter].)
4. By electronic mail dated [date] (attached as Attachment [letter]), [Agency Employee] responded to Petitioner that fulfilling the request would cost [\$] for [list of services]. The letter also asserted that [some] [all of the] documents would not be produced because [exemption classification claimed by Agency]. (See Attachment [letter]).
5. On [date], and within 15 days of the mailing date of Respondent's response, an appeal was filed with the Office of Open Records. [On [date], because no response was received from the Respondent within the required 5 day period, an appeal was filed with the Office of Open Records. (See Attachment [letter])].
6. [Use additional space to detail any further communication on this issue in chronological order. If there has been a partial production of documents, use the following two paragraphs in the appropriate place in the timeline:]
7. On [date], nearly [#] months after Petitioner's initial request, Respondent provided the first batch of responsive documents to Petitioner. This initial production represented only a partial response to the [#] enumerated requests in Petitioner's original request letter of [date]. [Note any further production of documents on later dates.]

8. On [date], the Respondent issued a denial of the appeal [on all requests][on the remaining requests]. (See Attachment [letter]).
9. Petitioner requested that the public records be provided in electronic format pursuant to 65 P.S. §67.701(a), but the agency instead provided paper copies and charged the student for the cost of producing the hard copies, in violation of 65 P.S. §67.1307(d).
10. Respondent's production remains incomplete because [provide explanation addressing all grounds agency raised in its denial, stating why each ground is incorrect]. In addition, Petitioner knows, or believes based on the best available information, that Respondent possesses documents responsive to items [#'s from the original request letter] that they have yet to produce.

CLAIMS FOR RELIEF

Count One: Violation of the Pennsylvania Right-to-Know Law

1. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.
2. The Pennsylvania Right-to-Know Law, 65 P.S. §305, declares that "a record in the possession of a Commonwealth Agency or local agency shall be presumed to be a public record. . ."
3. [If applicable, describe the delay in receiving a denial or in receiving access to documents. For example, Respondent did not produce the first document responsive to Petitioner's [date] request until [#] days from the date of the request.]

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court:

1. Assume jurisdiction over this action;
2. Enter an injunction against Respondent directing Respondent to comply fully and without further delay with the Pennsylvania Right-to-Know Law and to furnish Petitioner all public documents meeting the description in [his/her] requests;
3. Enter an injunction directing that, because Respondent's delay in complying with its obligations under the Right-to-Know law was without substantial justification, Respondent must waive all fees associated with Petitioner's requests;
4. Enter judgment in Petitioner's favor for nominal damages;
5. Award Petitioner reasonable attorneys' fees and costs as authorized by 65 P.S. §67.1304 and 1305, and;
6. Order such additional relief as the Court may deem just and proper.

DATED this the ____ day of [month], [year].

Respectfully submitted,

Petitioner's Lawyer, Esq.
(Pennsylvania Bar No. [#])

Lawyer's Firm
Street Address
City, State Zip
Phone
Email

CERTIFICATE OF SERVICE

I, [Student Name], hereby certify that I served a true and correct copy of the foregoing Petition upon each of the below-listed persons by depositing the same into First Class Mail postage prepaid, at [Name of town], Pennsylvania, addressed as follows:

- 1.[Name and address of Appeals Officer]
- 2.[Name and address of Open Records Officer]

[Date] _____

Petitioner's Lawyer, Esq.
(Pennsylvania Bar No. [#])

VERIFICATION

I, [Student Name], petitioner herein, verify that the foregoing information is true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to the penalties of 18 Pa. C.S. § 4704, which relates to unsworn falsification to authorities.

[Date] _____

Petitioner's Lawyer, Esq.
(Pennsylvania Bar No. [#])

EXHIBIT A



Pennsylvania
OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: _____

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): _____

NAME OF REQUESTER: _____

STREET ADDRESS: _____

CITY/STATE/COUNTY/ZIP(Required): _____

TELEPHONE (Optional): _____ **EMAIL (optional):** _____

RECORDS REQUESTED: *Provide as much specific detail as possible so the agency can identify the information.
Please use additional sheets if necessary

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? YES NO

****PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES****
****IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

EXHIBIT B



Pennsylvania
OFFICE OF OPEN RECORDS

**RIGHT TO KNOW LAW APPEAL
DENIAL OR PARTIAL DENIAL**

Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
Fax: (717) 425-5343 E-mail: openrecords@pa.gov

Today's date: _____

Requester's name: _____

Address/City/State/Zip: _____

Request submitted by: Fax Mail E-mail In-Person (Please check one)

Date of Right to Know request: _____ Date of Agency Response: _____

Telephone and fax number: _____ / _____ E-mail: _____

Name and address of Agency: _____

E-mail Address of Agency _____ Fax of Agency _____

Name and title of person who denied my request _____

I submitted a request for records to the agency named above. The agency either denied or partially denied my request. I am appealing that denial to the Office of Open Records (OOR), and I am providing the following information:

I was denied access to the following records (attach additional pages if necessary): _____

The agency's denial of my request is flawed and the requested records are public records because
(check all that apply) (**REQUIRED**):

- the records document the receipt or use of agency funds.
- the records are in the possession, custody or control of the agency and are not protected by any exemptions under Section 708 of the Right-to-Know Law, are not protected by privilege, and are not exempted under any Federal or State law or regulation.
- Other _____
(attach additional pages if necessary)

- I have attached a copy of my request for records. (**REQUIRED**)
- I have attached a copy of all responses from the agency regarding my request. (**REQUIRED**)
- I have attached any letters or notices extending the agency's time to respond to my request.
- I hereby agree to permit the OOR an additional thirty (30) days to issue a final order in this appeal.

Respectfully Submitted, _____ (must be signed)

You should provide the agency with a copy of this form and any documents you submit to the OOR.

EXHIBIT C



Pennsylvania

OFFICE OF OPEN RECORDS

RIGHT TO KNOW LAW APPEAL DEEMED DENIAL (NO AGENCY RESPONSE)

Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
Fax: (717) 425-5343 E-mail: openrecords@pa.gov

Today's date: _____

Requester's name: _____

Address/City/State/Zip: _____

Request submitted by: Fax Mail E-mail In-Person (Please check one)

Date of Right to Know request: _____

Telephone and fax number: _____ / _____ E-mail: _____

Name and Address of Agency: _____

E-mail Address of Agency : _____ Fax of Agency: _____

Name and title of person to whom request addressed _____

I submitted a request for records to the agency named above. The agency did not respond to my request. I am appealing that deemed denial to the Office of Open Records (OOR), and I am providing the following information:

I requested the following records (attach additional pages if necessary): _____

The requested records are public records because (check all that apply) (**REQUIRED**):

- the records document the receipt or use of agency funds.
- the records are in the possession, custody or control of the agency and are not subject to any exemptions under Section 708 of the Right-to-Know Law, are not protected by privilege, and are not exempted under any Federal or State law or regulation.
- Other _____

- I have attached a copy of my request for records. (**REQUIRED**)
- I have attached any letters or notices extending the agency's time to respond to my request.
- I hereby agree to permit the OOR an additional thirty (30) days to issue a final order in this appeal.

Respectfully Submitted, _____ (must be signed)

You should provide the agency with a copy of this form and any documents you submit to the OOR.

EXHIBIT D

"Legislative agency." Any of the following:

- (1) The Senate.
- (2) The House of Representatives.
- (3) The Capitol Preservation Committee.
- (4) The Center for Rural Pennsylvania.
- (5) The Joint Legislative Air and Water Pollution Control and Conservation Committee.
- (6) The Joint State Government Commission.
- (7) The Legislative Budget and Finance Committee.
- (8) The Legislative Data Processing Committee.
- (9) The Independent Regulatory Review Commission.
- (10) The Legislative Reference Bureau.
- (11) The Local Government Commission.
- (12) The Pennsylvania Commission on Sentencing.
- (13) The Legislative Reapportionment Commission.
- (14) The Legislative Office of Research Liaison.
- (15) The Legislative Audit Advisory Commission.

EXHIBIT E

"Commonwealth agency." Any of the following:

- (1) Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:
 - (i) The Governor's Office.
 - (ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
 - (iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.
- (2) The term does not include a judicial or legislative agency.