



CITY OF PHILADELPHIA  
LAW DEPARTMENT  
1515 Arch Street –17<sup>th</sup> Floor  
Philadelphia, PA  
19102-1595

July 21, 2023

**VIA EMAIL**

Paula Knudsen Burke  
Reporters Committee for Freedom of the Press  
[Pknudsen@rcfp.org](mailto:Pknudsen@rcfp.org)

Re: June 13, 2023 Letter

Dear Ms. Knudsen Burke:

Thank you for your letter and for your work for the Reporters Committee for the Freedom of the Press.

First and foremost, the City is committed to transparency in its operations and provides the opportunity to inspect and obtain City records in a timely fashion, within the scope of the law. At the same time, we have also come to recognize that the Right-To-Know Law (“RTKL”) needs reform to maximize the efficiency of the response times and to account for how records are stored and retrieved in the digital age. The City shares some of the concerns expressed by RCFP and invites constructive conversation around how the law may be reformed to both provide relief to agencies that are fulfilling large quantities of requests and to reduce response time to requesters.

There are no other agencies in the Commonwealth that are equivalent to the size of the City of Philadelphia, nor does any other agency in the Commonwealth handle the volume and complexity of RTK requests that the City does. For RTKL purposes, the City is both a single agency and a conglomerate of more than 25 separate agencies. Requests regularly involve multiple departments, offices, commissions, and boards, and we need to coordinate across all those parties in order to respond.

The City receives, on average, 10 new RTK requests every business day. We often receive numerous complex requests from the same requester in a single day. While some requests are simple and may be fulfilled quickly (assuming the City had no limitation on resources to process requests), many requests require the compiling and individual review of thousands of records. Also, many of the requests that come the City require complex e-mail searches more akin to discovery requests in complex litigation. For example, one recent e-mail request returned more than 70,000 potentially responsive records.

As you are aware, the RTKL timelines do not consider the volume of records sought, nor does the RTKL limit the amount of records that can be requested or how many requests someone can make. For example, we have received multiple requests for over a year's worth of email correspondence, requests for entire Departments' worth of email, etc. Although amendments to the RTKL to account for repeated, burdensome, voluminous requests have been proposed by the PA Legislature multiple times, to date no proposed amendment has passed that accounts for any protection or limitation in the law. Nothing in the RTKL limits requesters who send numerous large requests that bog down the process for everyone else.

Absent a change in the RTKL and given the high volume of requests that the City processes, the City endeavors to find efficiencies in the process wherever possible while still maintaining its commitment to transparency for the public and compliance with the RTKL and other laws. We make a concrete effort to fulfill simple requests within the 5-day period, but it is not always within our capacity, nor is it required that we do so under the RTKL. When a request is not able to be fulfilled within the first five business days, we provide an initial standardized notice to the requester that asserts multiple reasons for asserting the 30-day extension. This allows us to focus on the substance of the process and providing responsive public records. Whether one or multiple reasons is listed does not in any way impact the appeal rights of the requester.

Many requests are handled by operating departments with little or no input from the City Law Department. For example, the Department of Licenses and Inspections routinely handles its own RTK requests without any input from the Law Department. That data is not reflected in the information that was sent to you last December.<sup>1</sup> Last year, for example, over 600 requests were handled independently of the Law Department.

Many requests seek records that must be reviewed in accordance with other laws besides the RTKL, which requires involvement of the Law Department. For example, requesters frequently seek records that may be sensitive or non-public under a variety of laws, most commonly HIPAA, CHRIA, the PA Election Code, and the Child Protective Services Law. An error of releasing a record protected by HIPAA or CHRIA would violate the rights of third parties and subject the City to litigation and civil penalties.

At the same time, we have seen a dramatic increase in litigation related to RTKL requests since 2018/2019, which necessitates involvement of the Law Department. In 2022, the City received

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<sup>1</sup> Such data is not tracked or easily reported on as there is no uniform case management system used for processing requests outside of those handled by the Law Department.

approximately 145 appeals to the OOR, 2 appeals to the District Attorney's Office, and 21 appeals to the Court of Common Pleas.

The City provides information outside of the formal RTK process whenever possible and daily to media outlets and requesters. That data was also not reflected in the information that was sent to you last December, and by its very nature is difficult to track and quantify. The City may ask a media requester to make a formal RTK request if it is apparent that the request will produce a high volume of records that will need to be individually reviewed and redacted for personal and/or sensitive information. However, many times, that is not needed as we can direct people to information either already publicly available<sup>2</sup> or quickly put together information for media deadlines. Members of the media routinely use information from these responses to submit RTKL requests for a deeper dive into a particular topic.

A large portion of requests we receive do not comply with our Open Records Policy. Rather than reject such submissions, the City's practice is to accept these submissions for processing and then refer to the RTKL for guidance in determining whether records should be released in response to such requests. In 2022, approximately 35% of requests did not comply with the City's Open Records Policy,<sup>3</sup> but were nevertheless processed in accordance with the RTKL. As this is the standard practice of the City, the data provided to you does not differentiate between requests that do and requests that do not comply with the Open Records Policy. The 2022 data that you cited does not account for when requesters have granted us extensions beyond the normal RTKL deadlines, when there are production schedules in place, and/or when we are processing requests under the RTKL that did not comply with our Open Records Policy (and therefore are not subject to the same RTKL deadlines).

As the 2019 collaboration between the University of Pennsylvania's Anneberg School and Rutgers University's School of Communications and Information—the Media, Inequality and Changer Center and the Center for Media Risk report you cited to in your letter stated, "There is little to no formalized training for RTK methods or PA transparency laws state in journalism programs or in newsrooms. Ad-hoc trainings or one-off boot camps are much more common".<sup>4</sup> The natural result of this is that it takes more time to process requests, members of the media are not educated on what records are considered public, and members of the media are not trained in how to best structure requests to obtain the public records they seek.

One of the biggest challenges we see with the RTKL is lack of consideration for time and resources necessary to perform search, review, redaction, and production of email and other digital communications. Requests that seek digital communications must be translated into custom searches of email correspondence can easily produce thousands of records which require staff time to review and redact for personal and sensitive information in accordance with the RTKL law and other privacy laws that departments need to comply with such as HIPAA,

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<sup>2</sup> For example, the Law Department receives many requests for lawsuit settlement data which is available online at <https://www.phila.gov/documents/civil-actions-data-including-cases-and-claims-resulting-in-city-payment/>

<sup>3</sup> The percentage of media requests that do not comply with the Policy is approximately the same as the percentage from non-media requests.

<sup>4</sup> [https://www.asc.upenn.edu/sites/default/files/2020-11/TheRighttoKnow\\_11.pdf](https://www.asc.upenn.edu/sites/default/files/2020-11/TheRighttoKnow_11.pdf) at 4.

CHRIA, and other laws. Requests for digital communications are disproportionately demanding of resources, not just of personnel, but of costs incurred by the City to process requests using eDiscovery software and providers.

Lastly, the RTKL does not require an agency to create a record if one does not exist at the time of the request. Nevertheless, the City sometimes asserts the 30-day extension so that we can work with requesters to provide them records rather than responding quickly saying that there were no responsive records.

Again, the City is passionate about transparency and public records, and this is demonstrated by:

- Our processing of requests that do not comply with our Open Records Policy to give requesters access to records and information;
- Our practice of not passing on fees to requesters in many situations when we are permitted to do so by law;
- Our record of helping requesters get to other state, local, and federal agencies where they may be able to find records they are seeking;
- Our commitment to helping requesters obtain information outside the RTKL where they can readily obtain records they're seeking, including those that are not available for release in response to RTKL requests, such as:
  - Individuals who are seeking their own personnel files;
  - Homeowners seeking copies of copyright-protected residential plans;
  - Legal guardians seeking child welfare case information for dependent minors; and
  - Attorneys seeking non-public records related to client matters, such as EMS records, lead poisoning investigation, etc.
- Our practice of working with requesters to process insufficiently specific requests through reasonable interpretations of the request and/or engaging in discussion with requesters to help understand what they're looking for.

We would welcome an opportunity to sit down with you to discuss any of these issues and to work together to find solutions to issues we share. We look forward to hearing back from you.

Sincerely,

/s/

Andrew Richman  
Chair, Compliance, Investigations  
and Privacy – City of Philadelphia  
Law Department

Cc: Diana Cortes, City Solicitor  
Feige Grundman, Chief Deputy City Solicitor, RTK Unit  
Sarah Peterson, Communications Director – Mayor's Office