

STANDARD RIGHT TO KNOW ACT
RESPONSE PROCEDURES

1. **Send Requests to Open Records Officer.** All requests must be promptly forwarded to the Open Records Officer for response. If a request is made verbally, the requester should be directed to the office of the Open Records Officer to complete the necessary form.
2. **Mark Dates Received and Response Due.** The Open Records Officer receives the request, and notes the date of receipt and the date the response is due (5 **business** days after receipt) on the request.
3. **Direct Request to Appropriate Persons.** The Open Records Officer can forward the request to others within the District to provide a response or responsive documents. The Open Records Officer is responsible for tracking the District's progress in responding.
4. **Presumption.** All records in the possession of the District are presumed to be public records. The burden is on the District to establish that a document fits into an exception to the public record presumption. The District must make a good faith effort to determine if the requested information is a public record.

**If the public record is not in the possession of the District, but is in the possession of a party with whom the District has contracted to perform a governmental function on behalf of the District, and which directly relates to the governmental function and is not exempt, it is a public record and the Open Records Officer must get a copy from the party.

5. **Fee Limitations.** When public records are copied and produced for a requester, the District is allowed to charge certain fees:
 - a. **Postage:** must not exceed the actual cost of mailing
 - b. **Duplication:** The Office of Open Records sets the fees for copying, which may vary by region, but the fees must be reasonable and based on the prevailing fees for comparable duplication services proved by local business entities.
 - c. **Certification:** if the requester wants a certified copy of a public record, the District may impose reasonable fees for official certification.
 - d. **Prepayment:** if the estimated cost of production is more than \$100, the District can require the requester to prepay.
6. **Exceptions to Open Records Presumption.** There are 30 (the actual statute section is attached):
 - (1) threat to the security of persons
 - (2) threat to the security of the public
 - (3) threat to the security of buildings
 - (4) threat to the security of computers
 - (5) medical records

- (6) Personal identification information (SSN, driver's license number, personal financial information, phone numbers, personal email, employee numbers, spouse's name, marital status)
- (7) most personnel records
- (8) Labor strategies; i.e., negotiations
- (9) Draft documents (resolutions, regulations, statements of policy, management directives, ordinances or amendments prepared for or by the District).
- (10) Predecisional deliberations
- (11) Trade secrets or proprietary information
- (12) Notes and working papers for personal use
- (13) Donor names, unless donating to a public official
- (14) Unpublished documents/works
- (15) Academic transcripts and records
- (16) Criminal investigations – documents relating to or resulting from
- (17) Records relating to non-criminal investigations
- (18) Records of emergency dispatch personnel
- (19) DNA and RNA records
- (20) Autopsy records
- (21) Draft minutes of any meeting of an agency, minutes or records of discussion during an executive session
- (22) Certain reports – appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations re: real estate or construction
- (23) Library records of identifiable individuals or groups of individuals
- (24) Library materials that are rare or precious
- (25) Nonpublic records of archeological sites, endangered plants or animals
- (26) Bidding documents before the bids are opened; certain information on the bidders
- (27) Communications with an insurance carrier or risk management (but not insured status in general)
- (28) Recipients of social services
- (29) Correspondence to members of the General Assembly requesting assistance
- (30) Records identifying the name, home address or date of birth of a child 17 years old or younger

7. **Response.** The response to the requester comes from the Open Records Officer. The response must be issued within 5 **business** days of receipt of the request. As under the former law, if the District cannot respond within five days, the Open Records Officer must communicate as much to the requester.

Reasons for an extension of time to respond include:

- a. redaction is required;
- b. retrieval of remote records;
- c. bona fide staffing limitations;
- d. legal review of documents is necessary;
- e. the requester has not complied with the District's policies regarding access;
- f. the requester refuses to pay the fees;

- g. the extent or nature of the request precludes a response within 5 days.

Notice of a delay in responding must include:

- a. That the request is being reviewed;
 - b. The reason for the review;
 - c. A reasonable date by which a response can be expected (but if the date is more than 30 days beyond the initial 5 business days, then the request is deemed denied, unless the requester agrees in writing to an extension to the date specified in the notice);
 - d. An estimate of the fees owed.
8. **Denial.** When the request for information is denied, or denied in part, the following information must be included in the notice of denial:
- a. A description of the record requested;
 - b. Specific reason(s) for the denial, citing authority;
 - c. The typed or printed name, title, business address, business telephone and signature of the Open Records Officer responding;
 - d. The date of the response;
 - e. The procedure to appeal the denial.
9. **Appeal Procedure.**
- a. The requester can appeal a denial by the District to the Office of Open Records or the local appeal officer within 15 **business** days of the date of the District's response or deemed denial.
 - b. The requester in its appeal, must state why they think the requested information is a public record and address the ground of the District for denying or delaying the request. **Any other person with a direct interest may, within 15 days of learning of the appeal, may submit a written request to provide information to or appear before the appeal officer or to file information in support of the District's or requester's position.
 - c. The Office of Open Records would then assign an appeal officer. The appeal officer may conduct a hearing. The appeal officer then makes a decision with written explanation for his/her findings within 30 days of receipt of the appeal. If the appeal officer's decision is untimely, the appeal is deemed denied.
 - d. **Judicial Review.** The District or requester may petition the Delaware County Court of Common Pleas for review of the appeal officer's decision within 30 days of the mailing date of the appeal officer's decision.
 - (i) Costs – the requester may be awarded costs if the court reverses the appeal officer's decision or grants access after the request was *deemed* denied if:

- (1) the District willfully or wantonly denied access in bad faith, OR
- (2) the District applied an unreasonable interpretation of the law in denying the request

- (ii) Sanctions for frivolity – the court may award reasonable attorneys fees or costs to either side that requests or denies frivolously. For the District, the sanctions can be up to \$1,500 if it is found that the District denied access in bad faith. If it is found that the District failed to comply with a court order, it can be fined \$500 for each day it has failed to comply.