

5.6 RIGHT-TO-KNOW

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Revised:

Purpose

The Board of Trustees recognizes the importance of public records as the record of the College's actions and the repository of information about the College. The College shall provide access to public information in accordance with Pennsylvania's Right to Know Law and this Policy.

Definitions

- **Confidential Proprietary Information** - commercial or financial information received by the College:
 - Which is privileged or confidential.
 - Disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.
- **Financial Record** - any account, voucher, or contract dealing with the receipt or disbursement of funds or acquisition, use or disposal of services, supplies, materials, equipment or property; or the salary or other payments or expenses paid to an officer or employee, including the individual's name and title; and a financial audit report, excluding the audit's underlying work papers.
- **Privilege** - The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of Pennsylvania.
- **Public Record** - a record, including a financial record, that is not protected by a defined privilege or is not exempt from being disclosed under one of the exemptions in Pennsylvania's Right-to-Know Law or under other federal or state law or regulation, or judicial decree or order.
- **Record** - information, regardless of physical form or characteristics, that documents a College transaction or activity and is created, received, or retained pursuant to law or in connection with a College transaction, business, or activity, including: a document; paper; letter; map; book; tape; photograph; film or sound recording; information stored or maintained electronically; and a dataprocessed or image-processed document.
- **Response** - granting of access to a record or the College's written notice to a requester granting, denying, or partially granting and partially denying access to a requested record.
- **Requester** - a legal resident of the United States who requests access to a record. The term includes an agency.
- **Trade secret** - information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique, or process that:
 - Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.
 - Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term trade secret includes data processing software obtained by an Agency under a licensing agreement prohibiting disclosure.

Policy

Delegation of Responsibility

The President shall designate a Right-to-Know Officer (RTK Officer) and back-up who shall serve as the College's open records officer as defined in Pennsylvania's Right-to-Know Act. The RTK Officer shall be responsible to:

1. Receive written requests for access to records submitted to the College.
2. Develop and revise the form used to request records as well as forms used in responding to requests for public records.
3. Review and respond to written requests in accordance with law, Board, and administrative policies.
4. Direct requests to other appropriate individuals in the College or to the appropriate persons in another agency.
5. Track the College's progress in responding to requests including but not limited to noting the date of receipt on the written request, computing the day on which the five-day response expires, and making a notation of that date on the written or electronic copy of a request.
6. Issue interim and final responses to submitted requests, including computing the day on which extension of a thirty days to respond expires and making a notation of that date on the written request. If a written request for access to a record is denied, the mailing date of the RTK Officer's response shall be noted on the written denial.
7. Maintain a log of all record requests and their dispositions.
8. Maintain a file for each request and all documents submitted with the request including but not limited to the original request, a copy of the response(s), a record of written communications with the requester, and a copy of any other communications. If the written request is denied, maintain the written request for at least thirty (30) days or, if an appeal is filed, until a final determination is issued and the appeal period has expired.
9. Ensure College staff are trained to perform assigned job functions relative to requests for access to records.

Guidelines

Requesters may access and procure copies of the public records of the College during regular business hours.

A requester's right of access does not include the right to remove a record from the control or supervision of the RTK Officer.

When responding to a request for access, the College is not required to create a record that does not exist nor to compile, maintain, format, or organize a record in a manner which the College does not currently use.

Information shall be made available to individuals with disabilities in an appropriate format, upon request and with sufficient advance notice.

The College shall post at the RTK Officer's office and on the College's web site, the following information:

1. Contact information for the RTK Officer.
2. Contact information for the Pennsylvania Office of Open Records.
3. The form which may be used to file a request.

4. Policy, guidelines, and procedures governing requests for access to the College's public records.

Request for Access

A written request for access to a public record shall be submitted on the required form(s) and addressed to the RTK Officer.

Written requests may be submitted to the RTK Officer in person, by mail, to a designated facsimile machine, or to a designated e-mail address.

The RTK Officer may not accept verbal or telephonic requests.

The RTK Officer may not accept written, anonymous requests.

Each request must include the following information:

1. Identification or description of the requested record in sufficient detail.
2. Medium in which the record is requested.
3. Name and address of the individual to receive the College's response.

The College shall not require an explanation of the reason for the request or the intended use of the requested record, unless otherwise required by law.

Fees

The RTK Officer shall establish and keep current a list of reasonable fees which shall be no more than the fee structure for permissible charges as established by the Office of Open Records associated with responding to requests for public records.

The fee for each photocopy shall be 25¢ per page. A "photocopy" is either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5" x 11" page. Fees for postage shall be the actual cost of mailing.

No fee may be imposed for review of a record to determine whether the record is subject to access under law.

Prior to granting access, the RTK Officer shall require prepayment of estimated fees when the fees required to fulfill the request are expected to exceed \$100. Otherwise, payment of the actual fees and costs shall be made at the time access is granted or prior to mailing or other delivery.

The RTK Officer may waive duplication fees when the requester duplicates the record or the College deems it is in the public interest to do so.

Enhanced Electronic Access: If the RTK Officer determines that the College offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester, the RTK Officer may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by this Act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access, or any other reasonable method and any combination thereof. The RTK Officer is authorized to seek approval from the Office of Open Records before fees for such access are charged.

Response to Request

College employees are directed to immediately forward requests for access to public records to the RTK Officer

Upon receipt of a written request for access to a record, the RTK Officer shall determine if the requested record is a public record and if the College has possession, custody, or control of that record.

The RTK Officer shall respond as promptly as possible under the existing circumstances, and the initial response time shall not exceed five (5) business days from the date the written request is received by the RTK Officer.

The initial response shall grant access to the requested record, deny access to the requested record, partially grant and partially deny access to the requested record, or notify the requester of the need for an extension of time to fully respond.

Extension of Time

If the RTK Officer determines that an extension of time is required to respond to a request, in accordance with the factors stated in law, written notice shall be sent within five (5) business days of receipt of request. The notice shall indicate that the request for access is being reviewed, the reason that the review requires an extension, a reasonable date when the response is expected, and, if applicable, an estimate of applicable fees owed when the record becomes available. Where this policy requires that "written notice" be provided, this shall include but is not limited to notice sent by the use of electronic mail or facsimile transmission.

Up to a thirty (30) day extension for at least one of the listed reasons does not require the consent of the requester.

A requester may consent in writing to an extension that exceeds thirty (30) days.

Granting of Request

If the RTK Officer determines that the request will be granted, the response shall inform the requester that access is granted and either include information on the regular business hours of the RTK Officer, provide electronic access, or state where the requester may go to inspect the records or information electronically at a publicly accessible site. The response shall either include a copy of the fee schedule in effect or notice of a web link to the fee schedule, a statement that prepayment of fees is required in a specified amount if access to the records will cost in excess of one hundred dollars (\$100.00), and the medium in which the records will be provided. Otherwise payment of fees and costs shall be made at the time the records are provided.

A public record shall be provided to the requester in the medium requested if it exists in that form; otherwise, it shall be provided in its existing medium. However, the College is not required to permit use of its computers.

The RTK Officer may respond to a records request by notifying the requester that the record is available through publicly accessible electronic means or that the College shall provide access to inspect the record electronically. If the requester, within thirty (30) days following receipt of the College's notice, submits a written request to have the record converted to paper, the College shall provide access in printed form within five (5) days of receipt of the request for conversion to paper.

If the RTK Officer determines that a public record contains information both subject to and not subject to access, the RTK Officer shall grant

access to the information subject to access and deny access to the information not subject to access. The RTK Officer shall redact from the record the information that is not subject to access.

If the RTK Officer responds to a requester that a copy of the requested record is available for delivery at the office maintained by the RTK Officer and the requester does not retrieve the record within sixty (60) days of the College's response, the College shall dispose of the copy and retain any fees paid to date.

The RTK Officer, after consultation with the College President may make an otherwise exempt record accessible for inspection and copying if all of the following apply: (1) Disclosure of the record is not prohibited under any (i) Federal or State law or regulation or (ii) Judicial order or decree; (2) the record is not protected by a privilege; and (3) the College President determines that the public interest favoring access outweighs any individual, agency, or public interest that may favor restriction of access.

Notification to Third Parties

When the College produces a record that is not a public record in response to a request, the RTK Officer shall notify any third party that provided the record to the College, any person that is the subject of the record, and the requester.

The RTK Officer shall notify a third party in writing of a record request if the requested record contains a trade secret or confidential proprietary information within five business days from receipt of the record request. If a record has been previously designated as containing a trade secret or confidential proprietary information, written notice of the need for a thirty day extension of time should be provided to the requester. The written notice to the third party shall advise that the third party has five business days from the date the third party receives notification from the College to provide input on the release of the record.

If a record has been previously designated as containing a trade secret or confidential proprietary information, access to that portion of the record shall ordinarily be denied unless the third party consents in writing to the release of the previously designated trade secret or confidential proprietary information. Release of information previously designated as containing a trade secret or confidential proprietary information should only be made after review by the College's solicitor.

Denial of Request

If the RTK Officer denies a request for access to a record, whether in whole or in part, a written response shall be sent within five (5) business days of receipt of the request. The response denying the request shall include the following:

1. Description of the record requested.
2. Specific reasons for denial, including a citation of supporting legal authority.
3. Name, title, business address, business telephone number, and signature of the RTK Officer on whose authority the denial is issued.
4. Date of the response.
5. Procedure for the requester to appeal a denial of access.

The RTK Officer may deny a request for access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.

The RTK Officer may deny a request for access to a record when timely access is not possible due to a disaster, or when access may cause physical damage or irreparable harm to the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the state's Office of Open Records within fifteen (15) business days of the mailing or transmittal date of the Open Records Officer's response or deemed denial.