

March 3, 2017



PNA LEGAL UPDATE

LEGAL AND LEGISLATIVE ISSUES AFFECTING THE NEWS INDUSTRY

A supplement to Headlines & Deadlines

Editorials

[Herald-Standard \(Uniontown\)](#)

Too risky: Big change in legal ads would hurt transparency

[PennLive/The Patriot-News \(Harrisburg\)](#)

Suit against media outlet is misguided

[Town and Country \(Pennsburg\)](#)

Right to Know and money well spent

Legislative Update

The Senate and House Appropriations Committees continued hearings on Governor Tom Wolf's [2017-18 budget proposal](#) this week. Next week will conclude the legislative budget hearings. Senator John Blake (D-Lackawanna) introduced two pieces of legislation that would amend the Right to Know Law. [Senate Bill 465](#) amends the law generally (and is very similar to last session's SB 411), while [Senate Bill 466](#) would expand access to certain records of the state-related universities (Penn State, Pittsburgh, Temple and Lincoln). Representative Tim Briggs (D-Montgomery) introduced [House Bill 661](#), which would require the Pennsylvania Department of Education to establish a media literacy curriculum for Pennsylvania's students enrolled in K-12.

Legal Issues from Around the Commonwealth

Court orders newspaper to provide records

The Superior Court has ordered Trib Total Media to turn over financial records as part of an ongoing lawsuit brought by the children of the media organization's late owner, Richard Scaife. Read more from the [Tribune-Review \(Pittsburgh\)](#).

Recorder of Deeds refuses public access to judge's property records

A Lackawanna County judge recently purchased property, and the public records that show the details of the transaction have been withheld by the Recorder of Deeds, who is relying on the Right to Know Law as a basis for denial. Read more from [The Times-Tribune \(Scranton\)](#).

PNA note: Recorder of Deeds' records are governed by the County Code, with fees for access set by Title 42. The County Code does not give Recorders discretion to withhold public access to deed records, and there are no reported decisions allowing Recorders to apply RTKL exemptions to their records. This policy is a significant departure from existing law and standard practice, which would negatively impact a number of industries, as well as the general public.

In This Issue

[Editorials](#)

[Legislative Update](#)

[Legal Issues from Around the Commonwealth](#)

[Beyond PA](#)

[Other Resources](#)

[Legal Hotline: Complex data fees under the Right to Know Law](#)



Legal Hotline

Do you have a question for the Legal Hotline?

Contact 717-703-3080



LEGAL QUESTION?
CALL
717-703-3080

The Legal Hotline is not meant to be legal advice.

Legal Update PDF

Visit the PNA website for a [printable PDF](#) of this week's Legal Update.

Right to Know Law helps public and businesses

The [Central Penn Business Journal \(Harrisburg\)](#) explores how businesses use the Right to Know Law and how changes to the law could impact businesses.

Vacancy remains after secret ballot

Crawford County commissioners have not filled a vacant seat on the county's Fair Board after the board voted by secret ballot on a recommended candidate. The board was questioned about their use of a secret ballot under the Sunshine Act, and the commissioners are awaiting more information before they proceed. Read more from [The Meadville Tribune](#)

Executive session creates questions

Allegheny County Council held an executive session prior to its regular meeting last week, but failed to announce the reasons justifying the private session. Read more from [TribLive](#)

Beyond PA

Free press organizations join to start news site

A coalition of organizations including the Committee to Protect Journalists, the Freedom of the Press Foundation, the Reporters Committee for the Freedom of the Press, the Knight First Amendment Institute at Columbia University and the Index on Censorship will launch an as-yet unnamed news site to track press freedom violations in the United States. The organizations' actions come in the wake of attacks on the free press by members of the Trump administration. [Read more here](#)

First Amendment experts weigh in after White House bans outlets from briefing

Last Friday, the White House barred specific news organizations from attending a press briefing by spokesman Sean Spicer. Among the organizations excluded from the question and answer session were BuzzFeed, CNN, the New York Times, and Politico. Now, nine First Amendment scholars weigh in on whether the ban violated the First Amendment. [Read more here](#)

Other Resources

PNA's America East features Ethics and Media Law session

Just as it has upended everything else, the digital revolution has forced radical new thinking about media ethics and media law. Copyright, fair use, libel, sourcing - all of these key issues (and more) are in a state of evolution. Learn from **Craig Staudenmaier** and **Elizabeth Seidlin-Bernstein** about developments in ethics and the law and how news organizations are adapting to this fast-changing landscape. [Read more here](#)

Celebrate Sunshine Week with PNA!

Join the PNA and Office of Open Records at Widener University on March 14 for a free panel discussion and luncheon in honor of Sunshine Week. The panel will feature discussion on the Right to Know Law in Pennsylvania, including what's working and what needs to be changed. CLE credits may be offered for a fee. [Sign up to attend today!](#)

From the Hotline

Q: My reporting focuses on data, and I routinely request complex data sets like GIS records from public agencies. Some agencies have given me fee estimates based on market rates, sometimes in the thousands of dollars. Isn't there a fee exception for media requesting complex data sets under the Right to Know Law (RTKL)? Can I appeal the fee estimates, even though the agency hasn't issued a denial letter?

A: Yes, there is a fee exemption for journalists seeking access to complex data sets under the RTKL, and the imposition of fees is appealable to the Office of Open Records even if there is no denial.

[Section 1307](#) of the Right to Know Law governs the fees that agencies can charge for access to public records, and this section of the law also requires the Office of Open Records (OOR) to set the fees for local and Commonwealth agencies. The [OOR's general fee schedule](#) allows agencies to charge up to \$.25 per page for black and white paper copies and impose other charges related to records requests. With regard to electronic records, the OOR allows agencies to charge up to \$3.00 for electronic records provided on disk or DVD, actual cost for electronic records provided on a flash drive, and no additional fees are permitted for electronic records provided via email. The RTKL does not permit agencies to charge for an agency's review of a record to determine whether the record is a public record subject to access under the RTKL. Likewise, no fee may be charged for searching for or retrieval of documents, and an agency may

not charge staff time or salary for complying with a RTK request.

In addition to the general fee provisions discussed above, section 1307(b)(4) permits agencies to charge "reasonable market value" for copies of complex and extensive data sets, like geographic information systems or integrated property assessment lists. However, the law does not permit agencies to charge this market-based fee to requestors connected with a newspaper or magazine of general circulation, weekly publication, press association or radio or television station, when the request is made for the purpose of obtaining information for publication or broadcast.

If a member of the press requests copies of complex or extensive data sets as part of the newsgathering process, the agency may only charge fees authorized by the OOR as part of the general fee structure, i.e. \$3.00 for a disc or DVD, the actual cost of a flash drive, etc.

PNA advises journalists to cite section 1307(b)(4)(ii)(A) and its fee limitations when making requests for complex data sets under the RTKL, and to note in the request that the records are being sought for the purpose of obtaining information for publication.

In the event that it is necessary, the imposition of fees is appealable to the Office of Open Records, even if the requested records have not been denied. See [Prison Legal News v. Office of Open Records](#), 992 A.2d 942 (Pa. Commw. Ct. 2010); [State Employees Ret. Sys. v. Office of Open Records](#), 10 A.3d 358 (Pa. Commw. Ct. 2010). The general rules governing appeals, found in [section 1101](#) of the RTKL, apply to fee-only appeals, and requesters must file an appeal within 15 business days of the agency's response, as well as comply with all other administrative appeal requirements.

As always, this is not intended to be, nor should it be construed as, legal advice. Please contact the PNA Legal Hotline at (717) 703-3080 with questions or for assistance with the OOR appeal process.

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