Pennsylvania State Association of Boroughs

The Leader in Municipal Training and Professional Development

COVID-19 Right-to-Know Law and Sunshine Act Q & A

April 29, 2020

This Webinar is designed to provide general information relating to the covered subject matter. None of the information is offered, nor should be construed, as legal advice. Although prepared by professionals, this publication should not be utilized as a substitute for professional services in specific situations. If legal advice or other expert assistance is required, the services of a professional should be sought.
Upcoming Webinars

Managing Heart and Lung Act Claims with COVID-19  April 30
Municipal Finances During an Emergency Declaration  May 6
Duties of a Zoning Hearing Board  May 13
Duties of a Zoning Officer  May 20
Records Disposition  May 21

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Upcoming Online Learning

Public Works Management

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 9</td>
<td>Public Works Administration</td>
</tr>
<tr>
<td>June 11</td>
<td>Public Works as First Responders</td>
</tr>
<tr>
<td>June 16</td>
<td>Public Works and Asset Management</td>
</tr>
<tr>
<td>June 18</td>
<td>Public Works Engineering and Design Standards</td>
</tr>
</tbody>
</table>

Police Civil Service Procedures
Establishing a Rental Property Inspection Program
Sunshine Act and Open Records
Grant Writing

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The Office of Open Records webinar will begin soon

• Use the “Conversation” box to submit questions
• Please keep your questions short and direct
• Submitted questions are records under the RTKL
• After the webinar ends:
  ▪ Email openrecords@pa.gov or call 717-346-9903
• OOR website has resources for agencies & requesters
  ▪ https://www.openrecords.pa.gov/

Sunshine Act & Right-to-Know Law During the COVID-19 Emergency

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Disclaimer

• The Office of Open Records is providing guidance to agencies concerning administering the Sunshine Act and the Right-to-Know Law during the COVID-19 emergency.
• This is not legal advice, and our guidance may not apply to every possible situation.

Sunshine Act

• Agencies must still abide by the Sunshine Act, and to the best extent possible, conduct official business in public.
• Act 15 of 2020 modifies certain provisions of the Sunshine Act, as well as some quorum requirements, to ensure the health and safety of the community, the board, and employees while ensuring public participation and government transparency.
• Most of these provisions are temporary, but some will extend beyond the current Emergency Declaration.
Quorum Requirements

• Act 15 allows agencies to meet remotely for the duration of the COVID-19 emergency.
• A physical quorum is not required, but a quorum is still required, including those members participating remotely.

The Meeting Itself

• Can the business be postponed until after the crisis? Many agencies are waiting until the declaration is lifted.
• Virtual meetings utilizing software platforms such as Skype, Zoom, GoToMeeting, Facebook, or conference calls.
  - Prior notice: (To the Extent Practicable) Date and time, how to log in, how to participate
  - Everyone can hear all other board members
  - PSBA is providing extended licenses to SD’s for Zoom
• Actual meetings with social distancing (not recommended)
Public Participation

• Like the Sunshine Act, Act 15 requires public participation on matters before the board prior to official action.
• Agencies must provide public participation using at least one of the following:
  – Directly through the system used to hold the meeting;
  – Via email; and/or
  – Via postal mail
• Ideally, agencies will provide all three methods. (Or more.)

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Public Participation

• Options: Post the agenda before the meeting
  – Use pre-registration to avoid “meeting hacking”
  – Have a live video public comment period (hand raising feature)
  – Allow phone ins during a specified comment period
  – Allow live instant messaging
  – Post an email address with the meeting notice and solicit comments
  – Solicit comments via postal mail or phone messages

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Emergency Meetings

• Act 15 allows for Emergency Meetings, without advance notice, to address emergency issues:
  – The purpose of the Emergency Meeting must be related to the COVID-19 Emergency Declaration.
  – All other meetings must have 5 days advance notice.
  – Minutes must be taken and made available to the public within 20 days.
  – Sunshine Act provisions re: other emergency meetings still apply.

We STRONGLY Recommend...

• Go the extra mile to communicate what you are doing during the emergency to ensure public trust.
• Record your meetings and make the recordings available to the public. They may also prove helpful if a complaint is filed with the courts.
• Provide notice as many ways as possible. Act 15 requires notice via a post on the agency website or in a newspaper of general circulation. Also use social media, email newsletter, etc.
The Right-to-Know Law

• Agencies must still abide by the RTKL, and to the best extent possible, respond to requests for public records.
• The Governor’s Emergency Declaration allows for limited discretion with suspending some formal requirements to ensure the health and safety of the community, the board, and employees.

Deadlines and Suspended Activities

• The OOR asks that only urgent requests be submitted at this time.
• If the agency is conducting public business, even though the physical office is closed, the time may be considered a business day. This is still a developing issue and will be evaluated on a case-by-case basis.
• Some agencies may have a legitimate, emergency-related reason to slow the processing of requests, but blanket suspensions of all RTKL activity will be closely scrutinized.
• The OOR will give all consideration to delays and deemed denials to ensure the due process rights of both parties are met.
The Office of Open Records

- The OOR is open for business, although our physical office is closed.
- All staff are working remotely.
- We have limited access to postal mail.
- Final Determinations are being published, but we are taking steps (including extensions of deadlines) to ensure due process.
- We continue to process every request received, although some responses may be delayed.
- You can still call and email us, and we will get back to you.

COVID19 as of 04.22.2020

Questions?

- Please keep them short and direct.
- Please limit them to the Sunshine Act and the RTKL.
- Remember that we are not providing legal advice.
- If you have a suggestion or best practice, let me know about it: gespiess@pa.gov

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