

CENTRE AREA TRANSPORTATION AUTHORITY
Policy on Requests for Public Records under the Pennsylvania “Right-To-Know” Law
Act 3 of 2008, effective January 1, 2009

The Centre Area Transportation Authority (CATA), a municipal authority, is a local agency covered by Pennsylvania’s “Right-to-Know” Law (the Act); this policy, adopted by the Board of Directors on January 19, 2009, sets forth definitions, procedures and other requirements for providing public records, as defined by the Act, in accordance with its provisions.

A record is defined as information, regardless of physical form or characteristics, that documents a transaction or activity of CATA and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of CATA. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image- processed document.

A public record is a record, including a financial record, that is not exempt under Section 708 of the Act, is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree, or is not protected by a privilege. Unless otherwise provided by law, a public record shall be accessible for inspection and duplication in accordance with the Act.

Open Records Officer:

CATA’s Open Records Officer is:

Kimberly Fragola, Director of Finance
Centre Area Transportation Authority
2081 West Whitehall Road
State College PA 16801
Telephone 814-238-2282 x 5179, Fax 814-238-7643, E-mail kfragola@catabus.com

The Open Records Officer shall receive written requests for public records submitted to CATA, direct requests to other appropriate persons within CATA or in another agency, track CATA’s progress in responding to requests and issue interim and final responses to requests.

Submitting a request for public records:

Written requests for public records must be submitted to the Open Records Officer, using the form provided. The form is available at CATA’s main office, 2081 West Whitehall Road, at CATA’s downtown office, 108 E. Beaver Avenue, both in State College PA, by mail upon request to the Right to Know Officer, as a .pdf file on CATA’s website, www.catabus.com, or by following the link on CATA’s website to the Pennsylvania Office of Open Records website (<http://openrecords.state.pa.us>). The completed form may be submitted to the attention of CATA’s Open Records Officer in person, by mail, by e-mail or by facsimile.

The written request should identify or describe the records sought with sufficient specificity to enable CATA to ascertain which records are being requested and shall include the name and address (including an e-mail address where available) to which CATA should address its response. Unless otherwise required by law, an explanation of the reason for the request or intended use of the records is not necessary and CATA may not deny a request for that reason.

CATA may fulfill verbal, written or anonymous verbal or written requests for access to records under this Act, but is not required to do so. However, the request for access to records must be a written request, as detailed above, if the requester wishes to pursue the relief and remedies provided for in the Act.

Response to a request for public records:

Upon receipt of a written request for access to a record, CATA shall make a good faith effort to determine if the record is a public record and whether it has possession, custody or control of the record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. CATA shall respond to the request within 5 business days from the date the written request is received by the Open Records Officer. If CATA fails to send a response within 5 business days, the written request shall be deemed denied.

Extension of time: Upon receipt of a written request, the Open Records Officer shall determine whether an extension of the time for a response is needed for one of the following reasons:

- (a) the request requires redaction of a record
- (b) the request requires the retrieval of a record stored in a remote location
- (c) timely response to the request cannot be accomplished due to bona fide, specified staffing limitations
- (d) legal review is necessary to determine whether the record is a record subject to access
- (e) the requester has not complied with CATA's policies regarding access to records
- (f) the requester refuses to pay applicable fees
- (g) the extent or nature of the request precludes a response within the required time period.

If an extension is required, the Open Records Officer shall notify the requester in writing, within 5 business days of receipt of the request, that the request is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date specified for a response exceeds 30 calendar days beyond the 5 business days allowed for an initial response, the request for access shall be deemed denied unless the requester agrees in writing to the date specified. If the requester agrees to the extension, the request shall be deemed denied on the day following that date if CATA does not respond by that date.

Access to records:

A record shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. CATA is not required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which it does not currently compile, maintain, format or organize the record. To the extent possible, the contents of a record shall be made accessible to a requester even when the record is physically unavailable.

Access to any computer of either CATA or an individual employee of CATA shall not be allowed.

Public records shall be available for inspection or duplication during CATA's regular business hours (8:00 a.m. until 5:00 p.m. Monday through Friday, except on holidays when the offices are closed) or will be made available by mail or e-mail, in accordance with the written request.

In addition, CATA may notify a requester that the record is available through publicly accessible electronic means or that it will provide access to inspect the record electronically. If the requester is unwilling or unable to access the record electronically, the requester may, within 30 calendar days following receipt of CATA's notification that the record is available electronically, submit a written request to CATA to have the record converted to paper. CATA shall then provide access to the record in printed form within 5 calendar days of its receipt of the written request for conversion to paper.

A public record which CATA does not possess but is in the possession of a party with whom CATA has contracted to perform a governmental function on its behalf and which directly relates to the governmental function and which is not exempt under the Act shall be considered a public record of CATA. The Act does not require access to any other record of the party in possession of the public record.

A request for a public record in possession of a party other than CATA shall be submitted to CATA's Open Records Officer. Upon determination that the record is subject to access, the Open Records Officer shall assess the duplication fee and upon collection remit the fee to the party in possession of the record if that party duplicated the record.

If, in response to a request, CATA produces a record that is not a public record, CATA shall identify both the person who is the subject of the request and the requester to any third party who provided the record to CATA.

CATA shall notify a third party of a request for a record if the third party provided the record and included a written statement that the record contains a trade secret or confidential proprietary information. Such notice shall be provided within 5 business days of receipt of the request. The third party shall have 5 business days from receipt of CATA's notice to provide input on release of the record. CATA shall deny the request or release the record within 10 business days of notice to the third party and notify the third party of its decision.

Redaction:

If CATA determines that a public record contains both information subject to access and information not subject to access, CATA shall grant access to information subject to access and deny access to information not subject to access. If the information not subject to access is an integral part of the public record and cannot be separated, CATA shall redact the non-accessible information and grant access to the remaining information. CATA may not deny access to the record if the inaccessible information is able to be redacted. Redaction of information under this paragraph shall be deemed a denial of access.

Fees will be assessed for the following:

- (a) Postage, not to exceed the actual cost of mailing.
- (b) Duplication, for photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication
 - \$.10 per page (single side) for letter sized black and white copies
 - Actual cost for specialized documents such as blueprints, color copies and non-standard sized documents and for facsimiles, microfiche or other media.
- (c) Certification, for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record
 - \$1.00 per record, not per page, plus applicable notarization fees.
- (d) Conversion to paper, where a record is only maintained electronically or in other nonpaper media, lesser of fee for duplication on paper or fee for duplication in the original media, unless the requester specifically requests duplication in a more expensive medium.
- (e) Enhanced electronic access, where CATA offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication as required
 - Fees will be assessed for provision of enhanced electronic access only to the extent that enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required. Fees for enhanced electronic access may be a flat rate, subscription fee for a period of time, per-transaction fee, fees based on cumulative time of system access or any other reasonable method and any combination thereof. Such fees shall be approved by the Office of Open Records and shall not be established with the intent or effect of excluding persons from access to records or creating profit.
- (f) For complex and extensive data sets, including geographic information systems or integrated property assessment lists, fees for copying may be based on the reasonable market value of the same or closely related data sets. This shall not apply to requests by individuals employed by or connected with a newspaper or magazine of general circulation, weekly newspaper publication, press association, radio or television station, for the purpose of obtaining information for publication or broadcast or to requests by nonprofit organizations for the conduct of educational research.
- (g) Where a requester wishes to inspect rather than receive a copy of a record which contains both public and non-public information, CATA shall redact the non-public information and assess fees for the copies of the redacted material to be inspected. There is no fee for the redaction.
- (h) CATA may waive fees for duplication of a record, including, but not limited to, instances when the requester duplicates the record, or CATA deems it in the public interest to do so. Fees may not be assessed for CATA's review to determine whether the record is a public record, for searching for or retrieving documents or for staff time for complying with request.

(i) Payment: Where fees are expected to exceed \$100, the requester must pre-pay an the estimated cost prior to granting a request for access to the records. Where fees are expected to be less than \$100, CATA shall fulfill the request, advise the requester of the cost and obtain payment of the fees before releasing the records. In all cases, only cash, credit card, money order or cashier's check can be accepted.

(j) If CATA notifies a requester that copies of the records are available for delivery at CATA's office and the requester fails to retrieve the records within 60 calendar days of CATA's notice, the copies will be disposed of and CATA will retain any fees paid.

Denial of requests

If CATA's response to a written request for access is a denial of the request, in whole or in part, the denial shall be issued in writing and shall include:

- (a) A description of the record requested
- (b) The specific reasons for the denial, including a citation of supporting legal authority
- (c) The name, title, address, telephone number and signature of the Open Records Officer on whose authority the denial is issued
- (d) Date of the response
- (e) The procedure to appeal the denial of access

In addition to denial of access because the record is exempt under Section 708 of the Act, or is exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree, or is protected by a privilege, CATA may deny a request if:

- (a) the requester has made repeated requests for the same record which have placed an unreasonable burden on CATA (denial for this reason shall not restrict the ability to request a different record)
- (b) timely access is not possible due to fire, flood or other disaster or access to historical, ancient or rare documents, records, archives and manuscripts may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.

If a request is denied, the written request shall be maintained for 30 calendar days or, if an appeal is filed, until a final determination is issued under the Act or the appeal is deemed denied.

Appeal process:

If a written request for access is denied or is deemed denied, the requestor may file an appeal with:

Commonwealth of Pennsylvania, Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
717-346-9903 Email: openrecords@state.pa.us

An appeal shall be filed within 15 business days of the mailing date of CATA's response or within 15 business days of a deemed denial, and shall specify the grounds stated by CATA for delaying or denying the request and the grounds on which the requester asserts that the record is a public record.

The Office of Open Records shall assign an appeals officer to review the denial, and unless the requester agrees otherwise, a final determination shall be mailed to the requester and CATA within 30 calendar days of receipt of the appeal. If a final determination is not issued within 30 calendar days, the appeal is deemed denied.

A third party with direct interest in the record subject to an appeal may, within 15 calendar days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the requester's or CATA's position. The appeals officer may grant this request if no hearing has been held, if the appeals officer has not yet issued

its order, and if the appeals officer believes the information will be probative. Copies of the written request shall be sent to CATA and the requester.

Within 30 calendar days of the mailing date of the final determination of the appeals officer or of the date a request for access is deemed denied, a requester or CATA may file a petition for review or other document as required with the Centre County Court of Common Pleas. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision. A petition for review under this section shall stay the release of documents until a decision is issued.

Sanctions and penalties:

If a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the court finds that CATA willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the Act or the exemptions, exclusions or defenses asserted by CATA in its final determination were not based on a reasonable interpretation of law, or may award such fees and costs to either CATA or to a requester if the court finds that that the legal challenge was frivolous.

A court may impose a civil penalty of not more than \$1,500 if CATA denied access to a public record in bad faith. In addition, CATA or a public official who does not promptly comply with a court order under the Act is subject to a civil penalty of not more than \$500 per day until the records are provided.

The Act does not prohibit a court from imposing penalties and costs under applicable rules of court.

Immunity:

Except as provided in the Act and other statutes governing the release of records, no CATA official or employee shall be liable for civil penalties resulting from compliance or failure to comply with the Act, or for civil or criminal damages or penalties under the Act for complying with any written public record retention and disposition schedule.

Retention of records:

Nothing in the Act shall be construed to modify, rescind or supersede any CATA record retention policy or disposition schedule established pursuant to law, regulation, policy or other directive and records which have been disposed of in accordance with those laws will not be re-created.