

What You Need to Know About the Right-To-Know Law

EMPLOYEE INFORMATION & THE RIGHT-TO-KNOW LAW

Prepared by PSEA Legal Division
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Pennsylvania's Right-to-Know Law was designed to increase transparency in the government's decision-making and activities. At the same time, application of the Law may result in public access to information about individual public employees. This alert provides PSEA members with information about the Right-to-Know Law and how it may affect them.

Whose information is subject to the Right-to-Know Law?

The Right-to-Know Law generally provides public access to the records of Commonwealth agencies, local agencies, courts, and legislative agencies. As "local agencies," all public school districts, intermediate units, charter schools, and public trade or vocational schools are subject to the Law's requirements.

What records are "public" records under the Law?

The Right-to-Know Law defines a "public record" of an agency as any information that documents a transaction or activity of the agency, and information that is created, received, or retained either by law or in connection with the business or activities of the agency. This information can be in any physical form – paper or electronic, document or recording, etc. The Law is very broad in scope, and would include many records created or received by individual public employees.

The term "public record" also includes financial records of an agency. Financial records consist of accounting records of an agency and contracts which the agency has entered into, including final collective bargaining agreements and individual employment contracts. It also includes an individual employee's salary and other compensation, and the length of service of an employee.

What records are not "public" under the Law?

The Right-to-Know Law contains a long, detailed list of exclusions that would protect certain records with information about individual public employees. For example, the Law exempts the following *personal information* from public disclosure:

- Social security, driver's license, employee, and other confidential number.
- Personal financial information.
- Home, cellular, and other personal telephone numbers, and personal email addresses.
- Information about an employee's medical, psychiatric or psychological history or status, and enrollment in a program designed for employees with disabilities (i.e., workers' or unemployment compensation).

- An employee’s marital status, the name of an employee’s spouse, or information about an employee’s dependents or beneficiaries.

The Right-to-Know Law also exempts the following *employment information* from public disclosure:

- Letters of reference or recommendation, and performance ratings or reviews.
- Employment applications of those who are *not* hired by an agency.
- Workplace support services program information.
- Written criticisms of an employee, and information relating to discipline, demotion, or discharge contained in a personnel file (but not the *final action* of an agency resulting in demotion or discharge).
- Academic transcripts.
- Examinations given in primary and secondary school, and scoring keys or answers.
- Licensure examinations and other examinations related to an individual’s qualifications.
- Notes and working papers made solely for an employee’s personal use that has no official purpose.
- Any information that relates to or results in either a criminal or noncriminal investigation.

The Right-to-Know Law exempts the following *labor relations information* from public disclosure:

- Records dealing with strategy or negotiations relating to collective bargaining, labor relations, and labor arbitrations (but not a final executed contract).
- An arbitrator’s opinion, an arbitration exhibit, and a transcript of an arbitration hearing (but not the arbitrator’s final award or order).
- Grievance materials.

The Law generally excludes any record for which disclosure would present a risk of physical harm or otherwise risk an individual’s personal security. Also, the Law excludes any record that is otherwise protected from disclosure by state or federal law, a court order, or an applicable privilege.

How does the Right-to-Know Law affect PSEA members?

The Right-to-Know Law includes broad disclosure requirements, making some information about individual employees subject to public access. For example, an individual public employee’s salary is “public record,” as well as his or her years of service. Public employers are also required to disclose collective bargaining agreements and individual employment contracts.

Certain individual employee information is protected from disclosure under the Law, including social security numbers, personal telephone numbers, and information about an employee’s family members. Also, many personnel records are exempt from disclosure, including written criticisms, letters of recommendation, and most disciplinary records.

The scope of the Right-to-Know Law's disclosure requirements and exceptions have often been the subject of litigation since the Law was enacted in 2009. The Pennsylvania Supreme Court recently ruled that public school employees' home addresses are protected from disclosure when requested from a school employer under the Right-to-Know Law, based on employees' right to informational privacy. Other information like birthdates, tax information, and political contributions have likewise been deemed exempt from disclosure.

Because of the broad sweep of the Right-to-Know Law, PSEA members working in public schools should be aware that many records or documents that are created or used in course of employment may be subject to public disclosure, including email. **PSEA recommends that employees use work email only for work-related communication.** Employees should make sure that every email is written using only professional language, and that they would be comfortable having any of their work email available for view by a member of the public.

Please contact your PSEA UniServ Representative if you have any questions about the Right-to-Know Law, and its effect on your individual employee information.