



Public Records or Protected Information

Making Statements of Financial Interests Public

If your borough receives a request for a copy of a Statement of Financial Interests (SFIs), do you:

- a) require a formal Right to Know Law (RTKL) request,
- b) take the 30-calendar day extension,
- c) provide redacted SFIs, or
- d) all the above?

If any of these are your practice, we urge you to reconsider. Any of the above are contrary to the Ethics Act, expose your borough to the unnecessary risk of RTKL litigation, and cause needless work for borough staff!

Purpose of Financial Disclosures

The Ethics Act states that citizens have a right to be assured that the financial interests of our public officials and public employees do not conflict with the public trust. The filing

of Statements of Financial Interests – and public access to those records – is one of the most fundamental ways to identify conflicts between public and private interests.

The Ethics Act requires that all Pennsylvania public officials, public employees, and solicitors – as those positions are defined in the Ethics Act – file Statements of Financial Interests, or SFIs, for each calendar year that they serve in their public position.

Like the timing requirements for tax returns, SFIs must be filed by May 1, and must disclose information for the prior calendar year (which means that former public officials and public employees must file an SFI even after they have left their public positions).

The Ethics Act also requires filers to disclose information about their creditors, income, employment, financial interests, business interests

and ownership, and certain real estate interests. Filers must disclose the source of gifts, travel, lodging, and hospitality, (over a certain amount), that they receive as part of their public positions. All this disclosed information is intended to reveal where filers outside interests – and therefore their conflicts – may lie.

The RTKL similarly focuses on good government, and its promotion of government transparency is consistent with the purposes of the Ethics Act. The RTKL contains a presumption that records in possession of a borough are public. However, the RTKL also contains many exclusions and exemptions that protect information, such as personal identification information like social security numbers, financial information, personal email addresses, employee numbers, etc.

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Public Access to Statements of Financial Interests

SFIs filed by public officials, public employees, and solicitors are public records. The Ethics Act explicitly requires that these forms be publicly available for inspection and copying during regular office hours and that governmental bodies must provide copying facilities at a charge not to exceed actual cost. 65 Pa.C.S. § 1104(e). The Commission's regulations further require that SFIs more than one year old be made available for public inspection and copying within two working days after the request has been made. 51 Pa. Code § 19.4(c).

As a rule, SFIs may not be redacted. The Ethics Act requires that "[a]ll statements of financial interests... shall be made available for public inspection and copying." This means that if the Ethics Act requires information to be listed on the SFI, that information may not be redacted.

Conflicts Between the Ethics Act and RTKL

Although the Ethics Act requires a borough to provide SFIs right away, (or within two working days for prior years' SFIs), the RTKL gives boroughs five days, (plus an available extension), to respond to a request for records. The Ethics Act prohibits redaction of required disclosures, but the RTKL allows the redaction of certain information. How is a borough to resolve these timing and redaction conflicts between two state laws?

The Ethics Act states that if there is a conflict between the Ethics Act and any other statute, the Ethics Act controls. 65 Pa.C.S. § 1112. This means that boroughs must make SFIs available for inspection and copying during regular office hours, (without the need for an RTKL request). It also means that boroughs may not redact any of the information that is required to be listed on the SFI, even if it would otherwise be exempt from disclosure under the RTKL.

In the case of redaction, there is a limited caveat. If a filer includes information on the SFI that is not required to be listed, (social security numbers, employee numbers, and bank account numbers are common examples), that information may be subject to redaction if it is otherwise protected from public disclosure under the RTKL. See, *Seamon v. Pennsylvania Department of Labor & Industry, Office of Open Records Docket No.: AP 2022-0915*. However, the best approach is for filers to list only the information required by the Ethics Act and avoid including unnecessary information that may require a legal judgment call to be made.

Best Practices for Handling Requests for SFIs

If someone requests current-year SFIs, provide access right away. If they request forms that are more than one year old, provide access within two working days. If the SFIs contain just the information requested on the form, you are not permitted to redact. If the SFIs contain extra information, you may wish to consult with your solicitor and redact the extra information if it is otherwise exempt from public disclosure under the RTKL. SFIs that were filed more than five years ago may be destroyed. However, if you have a request for a form that you could have destroyed but did not, you still must provide it.

Finally, you may consider educating your borough's public officials, public employees, and solicitors that they should list just what is required, and nothing more. Although it is certainly not required, you may also wish to have someone at the borough review the SFIs when they are initially filed, to ensure they do not contain unnecessary information.

When you receive requests for SFIs, you can easily and quickly provide them, saving borough staff time and reassuring members of the public that the borough acts with transparency and that the borough's public officials and public employees put the public's interest first. **B**



ABOUT THE AUTHOR

Mary Fox has served as the executive director of the Pennsylvania State Ethics Commission

since April 2022. Previously, Ms. Fox served as Counsel for the Pennsylvania Department of General Services and the Office of Inspector General, Assistant District Attorney in Bucks County, PA, and Counsel with the law firm of Meyer, Wagner, Brown & Kraus in St. Marys, PA. In 2019, Ms. Fox received the Certificate of Excellence from the Office of General Counsel for demonstrating the highest levels of professional excellence and personal commitment in the performance of services to the citizens of the Commonwealth of Pennsylvania. Ms. Fox earned her law degree from the Penn State Dickinson School of Law and her Bachelor of Science from the University of Pittsburgh. She has been licensed to practice law in Pennsylvania since 2004.