



**pennsylvania**

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

## **Right-to-Know Law & Sunshine Act**

*September 15, 2016*

<http://openrecords.pa.gov>

[@ErikOpenRecords](#)

[@OpenRecordsPA](#)

[earneson@pa.gov](mailto:earneson@pa.gov)

(717) 346-9903

# Right-to-Know Law Basics

All government records are **presumed** to be public records.

- 30 exceptions in the RTKL
- Exceptions in other laws & regulations
- Attorney-client privilege & other privileges
- Can be made non-public by court order

# What is a Record?

## A record is...

- “information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency”

# Records Take Many Shapes

## The Right-to-Know Law...

- **Doesn't** distinguish between emails & paper
- **Doesn't** distinguish between agency devices & personal devices
- It **only cares** if the document / email / whatever is a “record” – and then if that record is a “public record”

# Who Must Respond to Requests?

Every government agency (state & local) is **required** to respond to RTK requests.

- Every agency has an Open Records Officer
- Must respond within 5 business days
- Can extend the timeline by 30 calendar days
- Response: grant, deny, or a mix of both

# Record Retention

## The RTKL does not address record retention.

- Goal is a strong, effective retention policy
- Must balance agency needs & transparency
  - *Can't simply say "0 days for everything"*
- PHMC has a Municipal Records Manual
  - Includes a retention schedule
  - PHMC staff can be a great resource

# Office of Open Records

## The OOR appeal process is simple.

- A requester denied access can appeal to OOR
  - **Must file appeal w/in 15 calendar days**
- No lawyer necessary for requester
- OOR assigns Appeals Officer to oversee case
- Both sides can present evidence & argument
- OOR has **30 days** to issue Final Determination

# Contracts Available

## State contracts are in an online database.

- All state agency contracts > \$5,000
- <http://contracts.patresury.gov/>

## Local contracts are also available.

- Make a request under the RTKL
- Some redactions may be made
- Can appeal denials to the OOR



## Contract Search

---

### Search Using **Keyword(s)**

Step 1 - Enter specific contract keyword(s)

---

### Search Using **Other Terms**

Contracting Party(s)

Amount of Contract (\$)

Agency

Contract Number

### Date Range

Execution Date

from   to   or within last  days

Begin Date

from   to   or within last  days

End Date

from   to   or within last  days

Subject Matter Contains

Reset

Search

# **Benefit of Contracts / Procurement**

**Contract & procurement provisions are good for taxpayers.**

- Providing access to those kinds of records helps businesses compete for gov't contracts
- Increased competition reduces taxpayer cost

# Open Data Portals

## Some agencies posting large datasets.

- Pennsylvania
  - <https://data.pa.gov/>
- Open Data Philly
  - <https://www.opendataphilly.org/>
- Western PA Regional Data Center
  - <https://www.wprdc.org/>

# Sunshine Act Basics

## The Sunshine Act applies to...

- Any state or local government body
  - and all *committees*...
  - that perform an essential gov't function...
  - & exercises authority to take official action
- Making recommendations = official action

# **Sunshine Act – Public Notice**

## **Public notice of a meeting must be provided.**

- 3 days in advance of 1st regular meeting of the year, along w/ all remaining meetings
- Printed in a newspaper of general circulation
- Posted at the meeting site
- Special meetings = 24 hour notice

# **Sunshine Act – Public Comment**

## **Public comment must be allowed.**

- Right to comment on issues that are or may be before the board
- Board may establish reasonable rules for public comment

# **Sunshine Act – Executive Session**

## **The basics of Executive Session:**

- Held before, during, or after an open meeting
- Complete reason for Executive Session must be announced during the open meeting
- No official action can be taken during Executive Session

# **Sunshine Act – Executive Session**

## **Allowable reasons to hold Executive Session:**

- Personnel matters (hiring, firing, discipline)
- Discussing labor negotiations
- Considering purchasing or leasing property
- Consulting with counsel about litigation
- Avoiding violating privilege or confidentiality
- Discussing university admission standards



# Sunshine Act – Miscellaneous

## More requirements on the agency:

- Must produce minutes, including board attendance & who voted for and against
- No requirement for an agenda
- The public can record public meetings
- Agency recordings & minutes are public records

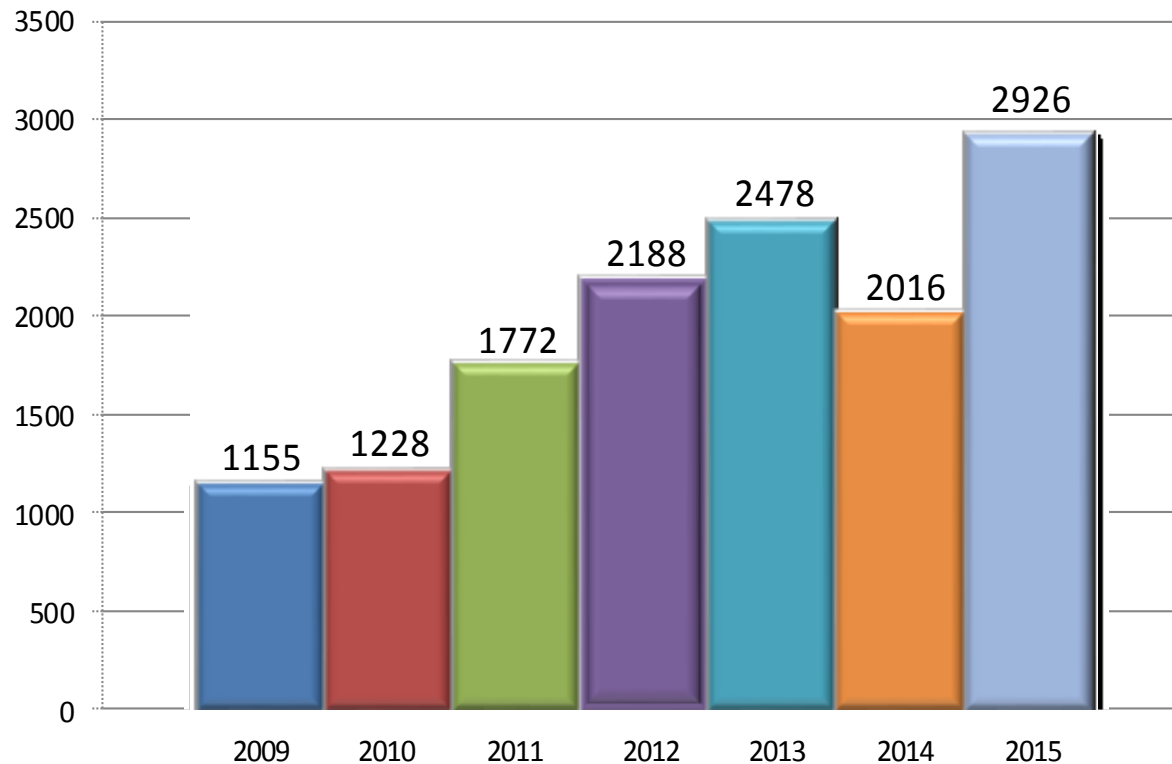
# OOR Caseload

Thousands of RTK appeals are filed every year.

- In 2015, OOR heard **2,926 appeals**
  - *Total appeals, not total requests*
- Of those, 61.3% involved local agencies

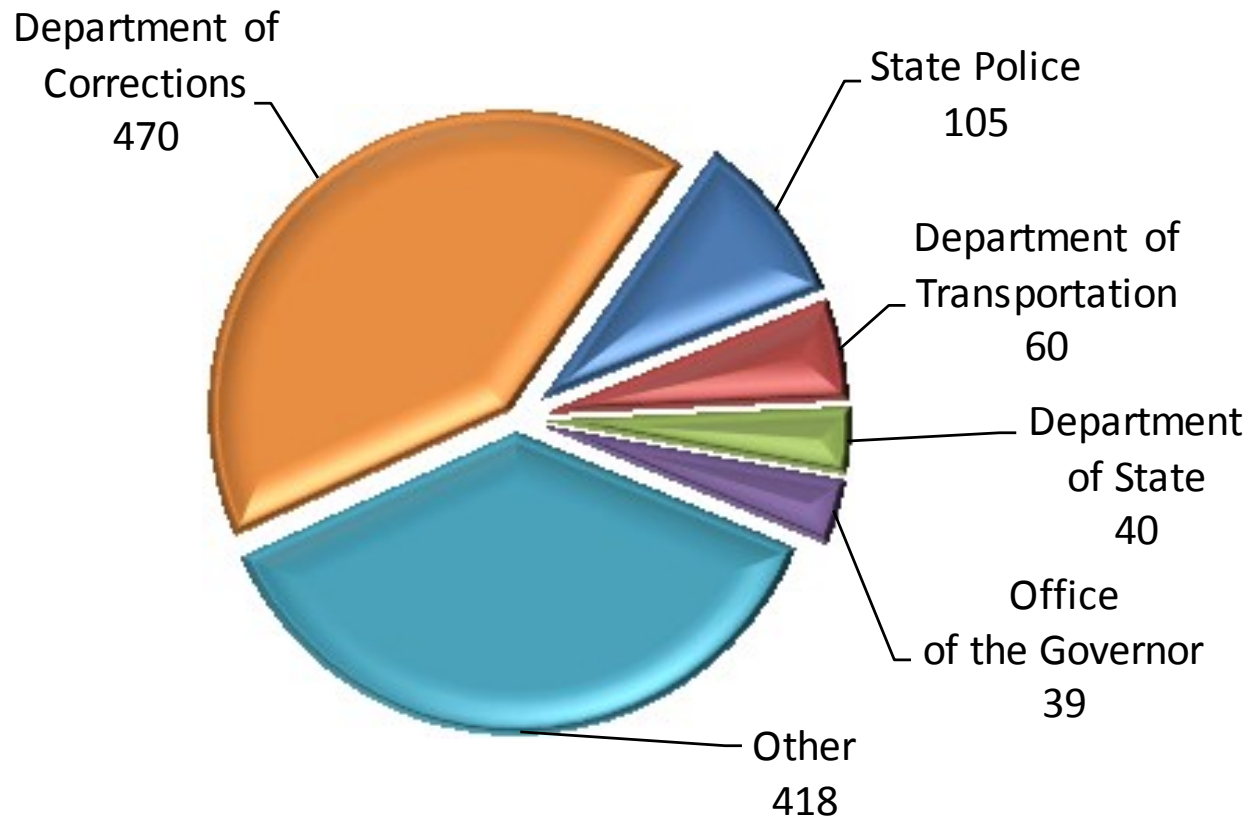
# OOR - Appeals Filed in 2015

**2,926 appeals filed w/ OOR in 2015.**

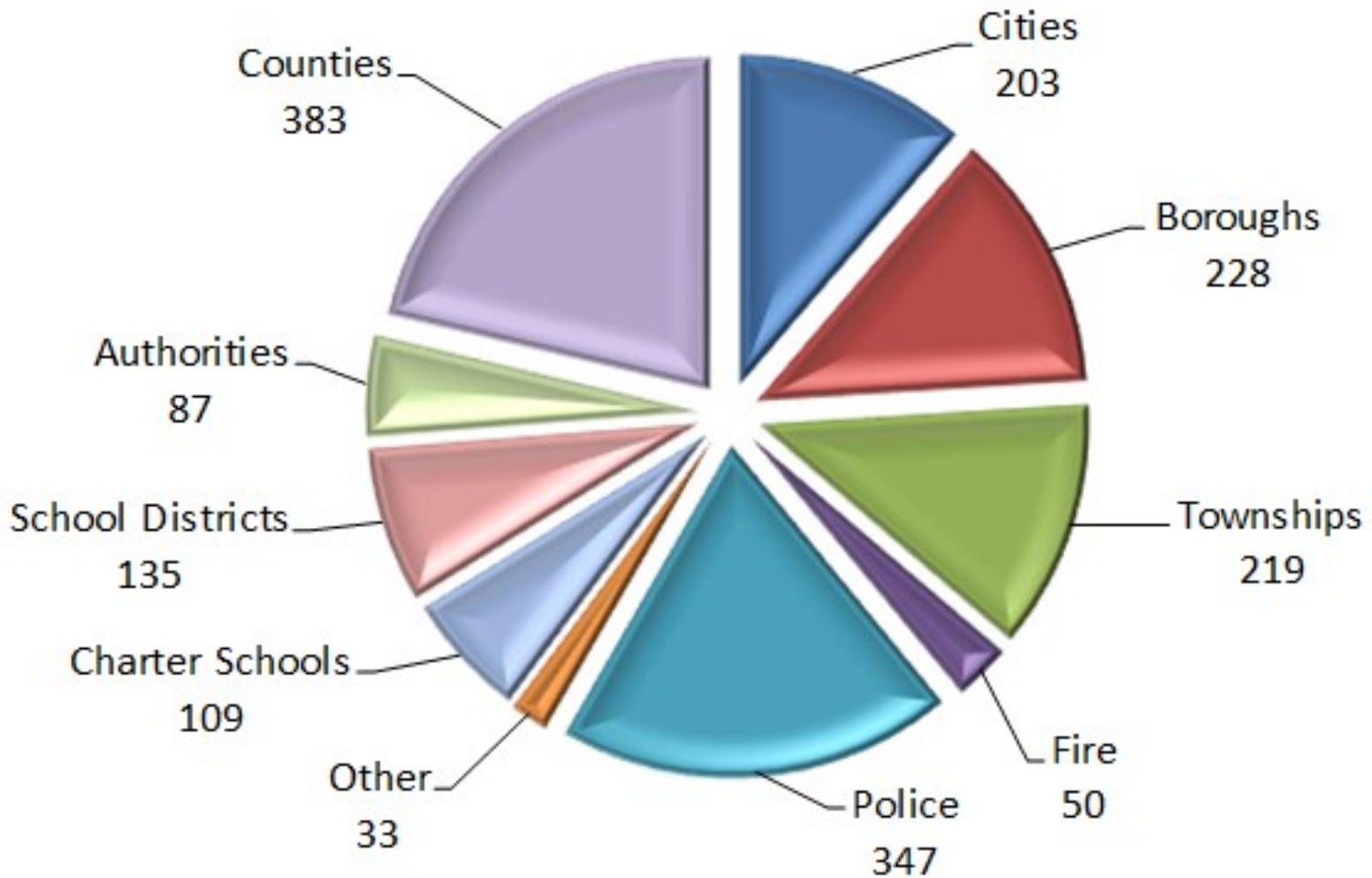


# State Agency Appeals in 2015

**1,132 appeals involving state agencies in 2015.**



# Local Agency Appeals in 2015



# The Office of Open Records

One of my goals is to simplify the RTK process for agencies & requesters.

- <http://openrecords.pa.gov>
- Constantly updating content
  - YouTube videos covering the basics
  - New AORO Guidebook for agencies
  - Sample affidavit forms for agencies
- Suggestions welcome

# Mediation

## Goal: Resolve more cases **informally**

- OOR authorized to establish mediation
- Limited resources made this difficult in past
- Resources still limited, but moving forward
- No harm in agreeing to mediation
  - Worst-case scenario: FD is slightly delayed

# Training from the OOR

## Training on the RTKL & Sunshine Act

- OOR website filled with information
  - [www.openrecords.pa.gov](http://www.openrecords.pa.gov)
- YouTube, podcast
- On-site training
  - Details on OOR website
  - Or call George Spiess, 717-346-9903





# pennsylvania

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

## THANK YOU

<http://openrecords.pa.gov>

[@ErikOpenRecords](#)

[@OpenRecordsPA](#)

[earneson@pa.gov](mailto:earneson@pa.gov)

(717) 346-9903