



pennsylvania

OFFICE OF OPEN RECORDS

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Development Institute**

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<http://openrecords.pa.gov>

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Office of Open Records

Created by RTKL: Independent & quasi-judicial

- Decide appeals filed by people denied access to records by government agencies
- **18 total staff**
 - Executive Director & Deputy Director
 - 12 Attorneys
 - Chief of Training & Outreach
 - 3 Administrative

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

Get to Know the AORO

AORO = Agency Open Records Officer

- If you have a contract w/ an agency, it makes good sense to get to know the AORO
- They will not *always* be required to notify you if someone requests records involving your organization – but nothing prevents them from doing so

Office of Open Records

Simple for requesters & agencies

- A requester denied access can appeal to OOR
- 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

Status of Authorities, Etc.

Certain authorities & corporations are subject to the Right-to-Know Law.

- Two main issues to consider:
 - Is it a local agency?
 - Is it a “similar governmental entity”?

Status of Authorities, Etc.

Is an authority / corp. a “similar gov’tal entity”:

- Is it a division of a political subdivision?
- How was it created?
- Who controls its operations?
- How is it funded?
- Does it perform a governmental function?
- Does it exercise the authority of a political subdivision?

Third-Party Contractor Records

Records submitted to gov't agencies by third-party contractors go through the same test.

- Info submitted to a gov't agency by a third-party contractor also **presumed to be public**.
- Common exceptions that may apply:
 - (b)(10): internal, predecisional deliberations
 - (b)(11): trade secrets & conf. proprietary info
 - (b)(26): financial information of a bidder

Third-Party Contractor Records

Some records NOT submitted to gov't agencies by third-party contractors may be public.

- Section 506(d): “A public record ... in the possession of a party with whom the agency has contracted to perform a governmental function ... and **which directly relates to the governmental function** and is not exempt ... shall be considered a public record of the agency for purposes of this act.”

Requests for Trade Secrets

Contractors are required to give agencies notice that submitted info includes a trade secret.

- Section 707(b): “An agency 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.”

Contracts Available

Online State Contract 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

Procurement Records Available

Procurement Provisions

- Records related to agency procurement or disposal of supplies, services or construction are available under RTKL...
 - After a contract is awarded, or
 - All bids are rejected

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

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

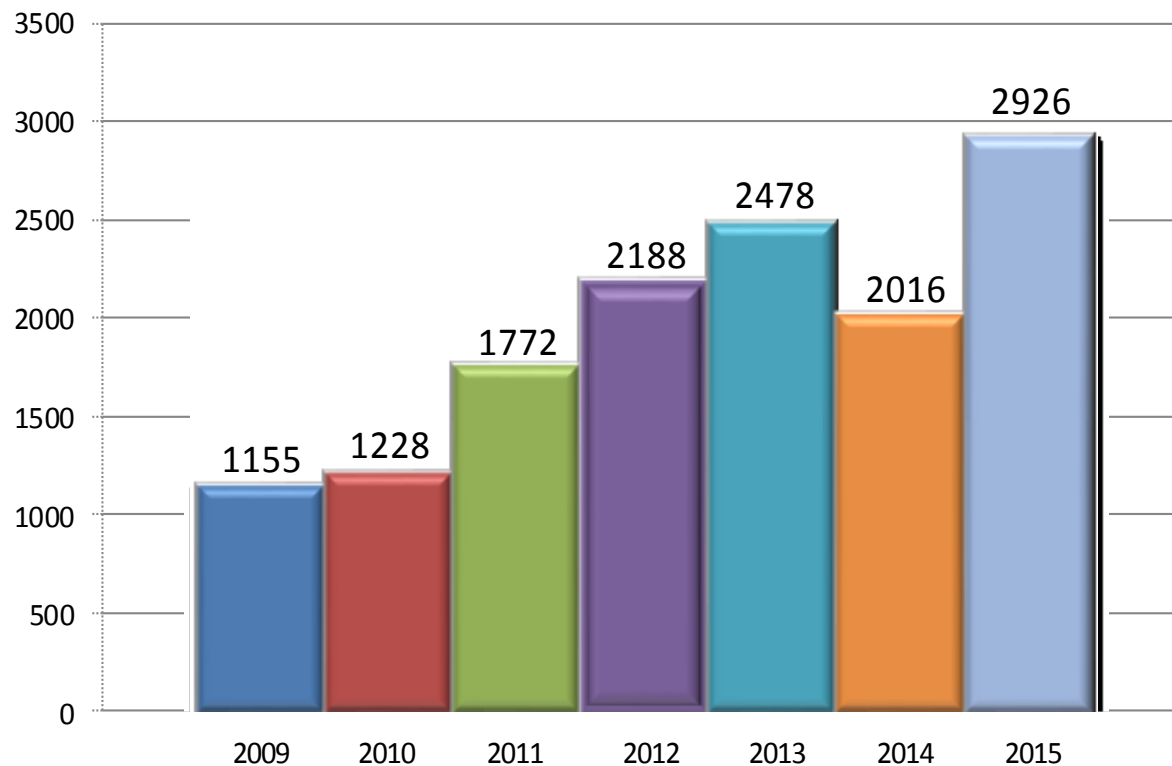
OOR Caseload

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

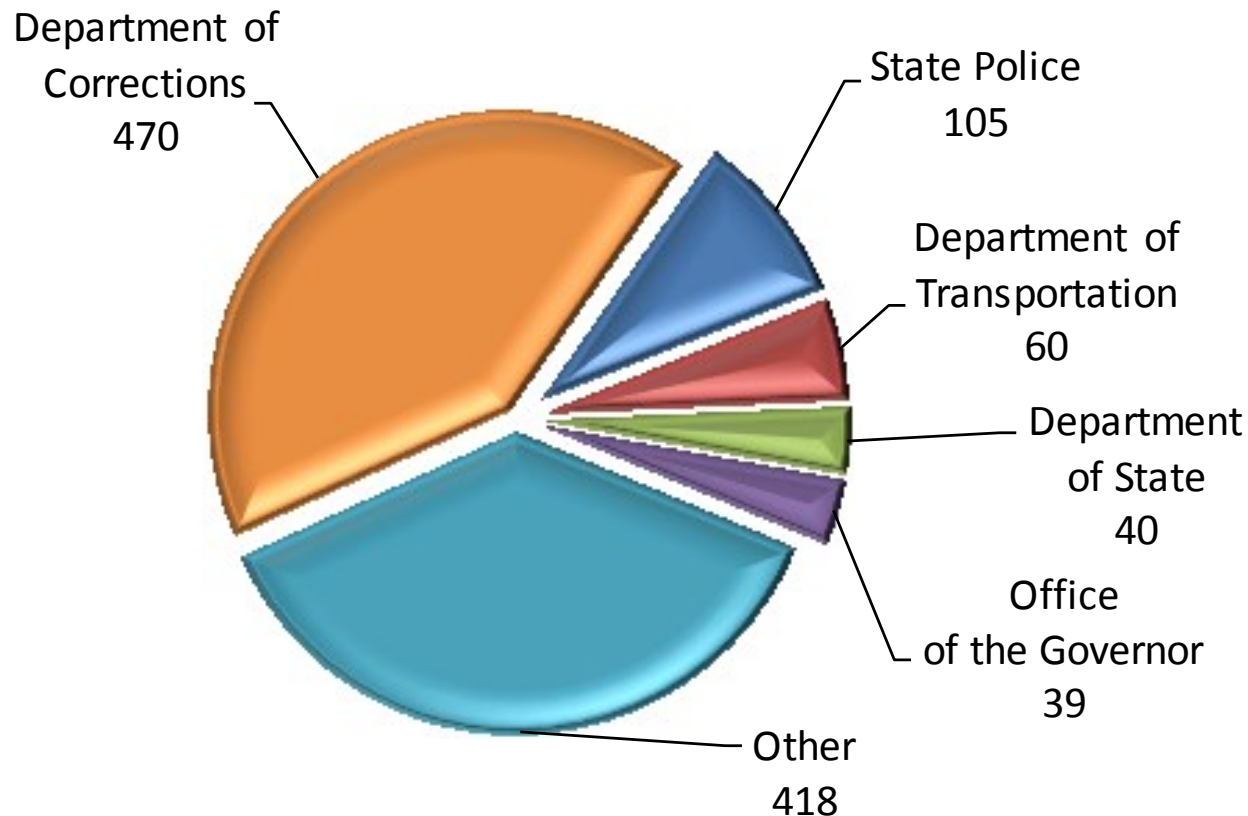
OOR - Appeals Filed in 2015

2,926 Appeals Filed w/ OOR in 2015

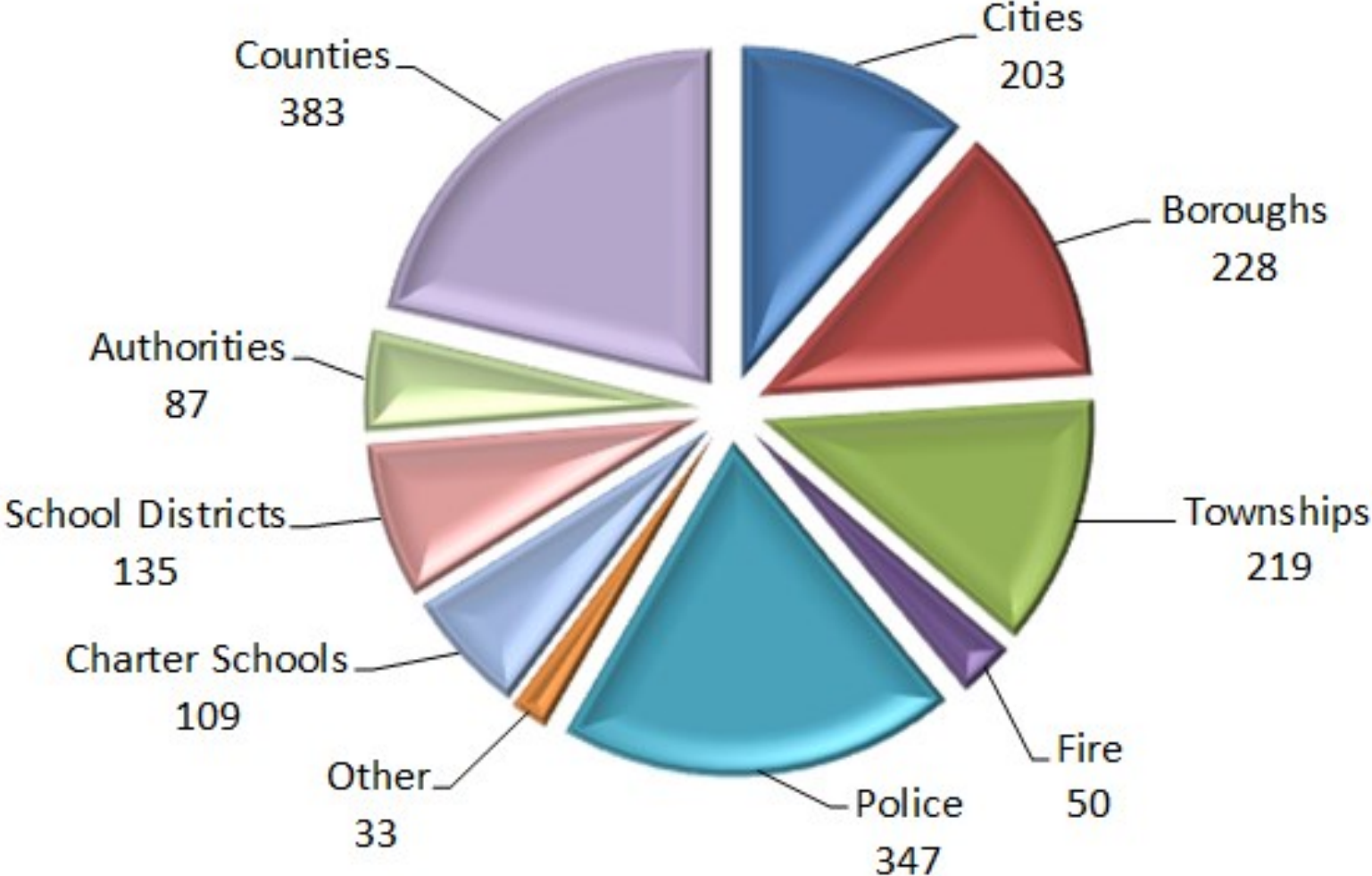


State Agency Appeals in 2015

1,132 Appeals Involving State Agencies in 2015



Local Agency Appeals in 2015



Office of Open Records

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

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

OOR Mediation

Goal: Resolve more cases **informally**

- > **50 cases** referred to mediation in 2016.
- Both sides agree to confidentiality.
- OOR provides trained mediator.
- If mediation successful, appeal is withdrawn.
- There's 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
- Very soon: YouTube videos
- OOR also provides on-site training
 - Details on OOR website
 - Or call George Spiess, 717-346-9903



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THANK YOU

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