



pennsylvania

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

Bodycams & The Right-to-Know Law

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<http://openrecords.pa.gov>

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Right-to-Know Law Basics

All gov't records **presumed** to be public

- 30 exceptions in the RTKL
 - Fewer apply to financial records & agg. data
- Exceptions in other laws & regulations
- Attorney-client privilege & other privileges
 - Only those recognized by Pennsylvania courts
 - Not the “self-critical evaluation” privilege
- 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, audio or video
- **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) **must** 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

- Agencies should have strong, effective retention policies
- 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

Created by RTKL: Independent & quasi-judicial

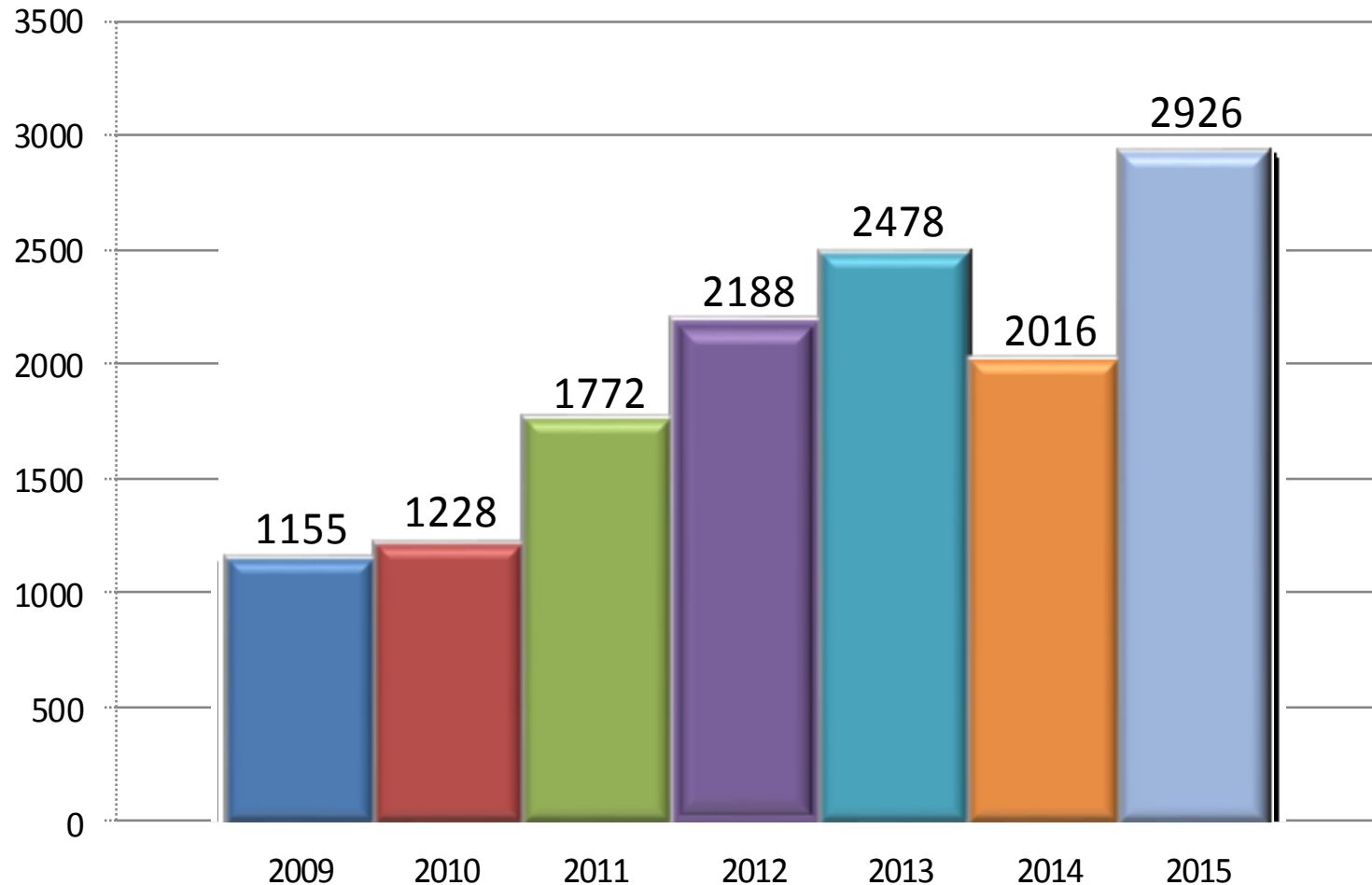
- Decide appeals filed by people denied access to records by government agencies
- **18 total staff**
 - Executive Director & Deputy Director
 - 12 Attorneys
 - Chief of Training & Outreach
 - 3 Administrative

Office of Open Records

OOR appeal process is simple

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

OOR - Appeals Filed, 2009 to 2015

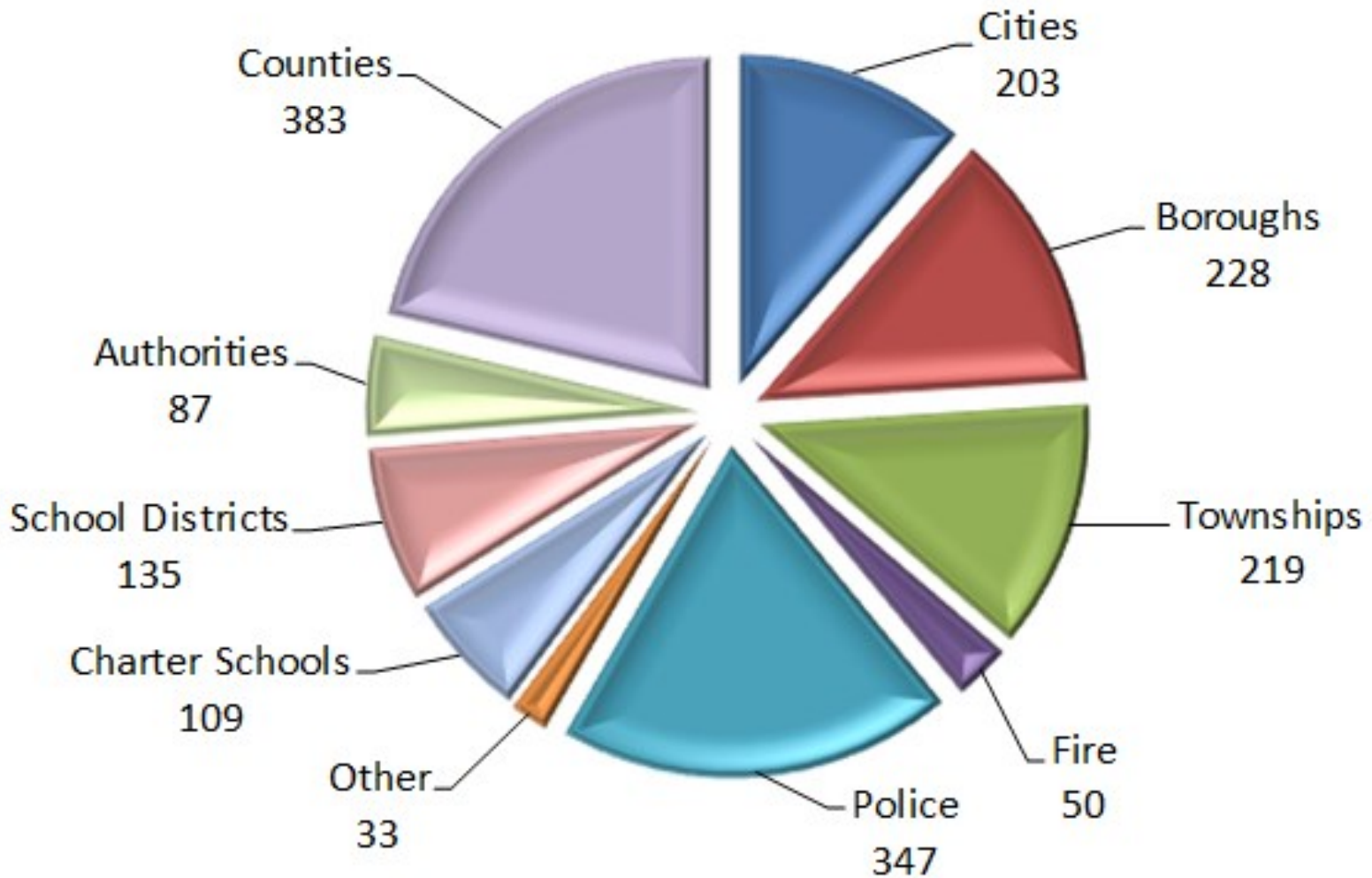


OOR Caseload

Thousands of RTK appeals are filed every year

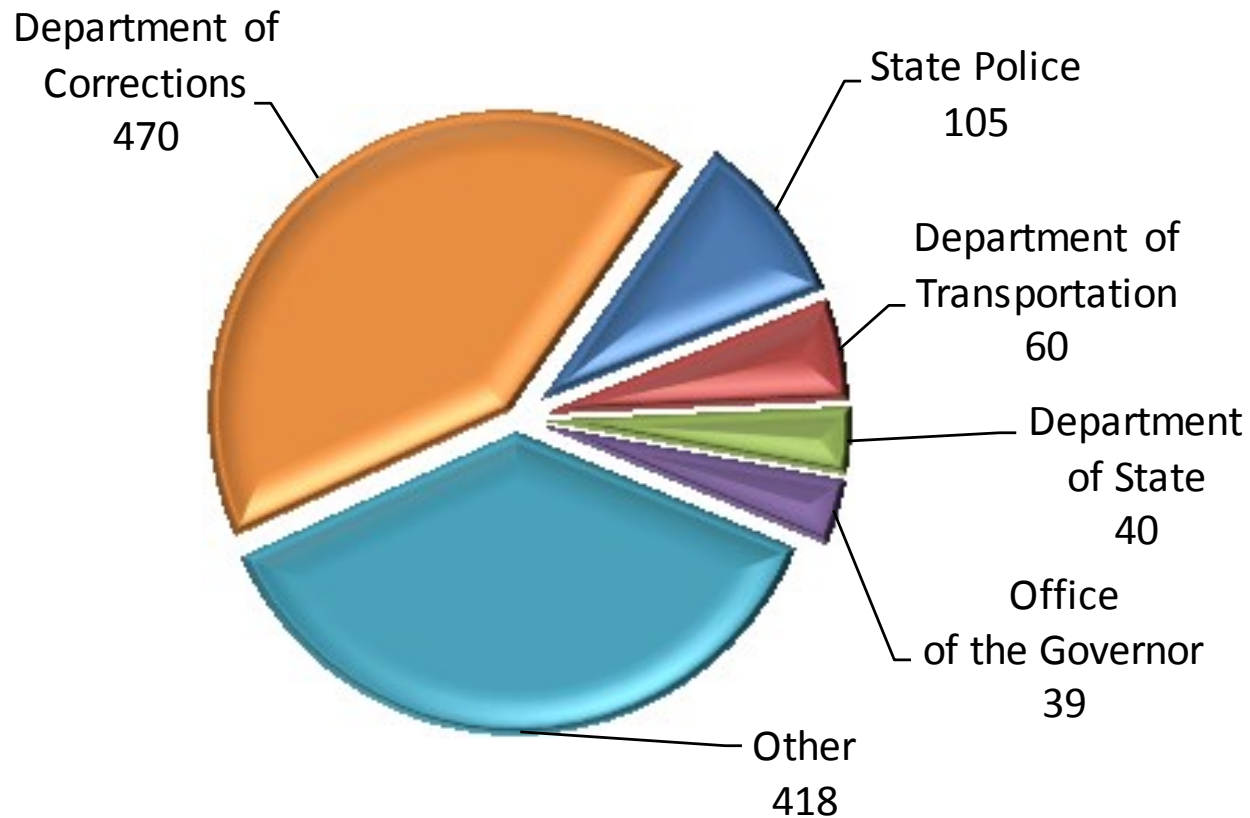
- In 2016, OOR heard **2,103 appeals**
 - That's total *appeals*, not total *requests*
 - No central database of # of requests
- Of the appeals, 61.3% involved local agencies

Local Agency Appeals in 2015



State Agency Appeals in 2015

1,132 appeals involving state agencies in 2015



Criminal Investigative Records of a Local Law Enforcement Agency

Section 503(d)(2):

- “The district attorney of a county shall designate one or more appeals officers to hear appeals ... relating to access to criminal investigative records in possession of a local agency of that county.”
- OOR transfers such cases to the DA
- OOR hears cases involving PSP

Video Records

OOOR is hearing more appeals of **video records**:

- Dashcams / Mobile Video Recordings (MVRs)
- Bodycams
- Stationary Cameras
- Cameras on Public Transit
- Cameras on School Buses

Video Records – Port Authority Bus

Towne v. Port Authority of Allegheny County **(2016-2028)**

- Request: Surveillance video from a bus
- Result: Agency denied request. On appeal, OOR granted access. Agency did not prove non-criminal investigation.
- Status: No known court appeal (due mid-Feb)

Video Records – Interior of Prison

Halpin v. Luzerne County (2016-1263)

- Request: Surveillance footage of incident at county prison
- Result: Agency denied request. On appeal, OOR upheld agency denial. Public safety exception proven.
- Status: No known court appeal

Video Records – Holding Cell

Rothey v. California Borough (2015-1925)

- Request: Video from a holding cell
- Result: Agency denied request. On appeal, OOR granted access. Hearing was held. Failed to demonstrate that release would jeopardize public safety. Video not investigative in nature.
- Status: Appealed to Common Pleas by agency

Video Records – Dashcam Video

Grove v. PSP (2014-0828)

- Request: Dashcam video from traffic stop
- Result: Agency denied request. On appeal, OOR granted access. Video did not include investigative material.
- Status: Pending in Supreme Court (Cmwlth court upheld OOR, remanded for further consideration related to audio portions)

Video Records – Bodycam Videos

Rago v. York City PD (2016-0872)

- Requested: Bodycam videos
- Result: Agency denied request. On appeal, OOR granted in part, denied in part. Some videos not investigatory; transferred to DA for appeal re: investigatory videos.
- Status: Appealed to Common Pleas by agency

Bodycam Videos – Legislation

Senate Bill 976 of 2015-16 Session

- Sponsor: Senator Greenleaf (Montgomery Co.)
- Addresses Wiretap Law issue & RTKL issues
- Status: Expected to be re-introduced in the Senate for the 2017-18 session

OOR's Mediation Program

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

OOOR Resources

Website, Twitter, Email Lists & More

- Web: <http://openrecords.pa.gov>
- Blog: <http://openrecordspa.wordpress.com>
- Twitter: @OpenRecordsPA
 - Executive Director: @ErikOpenRecords
- YouTube Channel
- Podcast on iTunes (Open Records in Pennsylvania)
- Email lists: Daily Digest of FDs & General Updates
 - Sign up at website



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THANK YOU

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