



**pennsylvania**

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

## **Pennsylvania Municipal League**

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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, common-sense retention policies
- Balancing agency needs & transparency
  - *Can't simply say "0 days for everything"*
- PA Historical & Museum Commission
  - Municipal Records Manual
  - 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

# RTK Appeal Process at 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

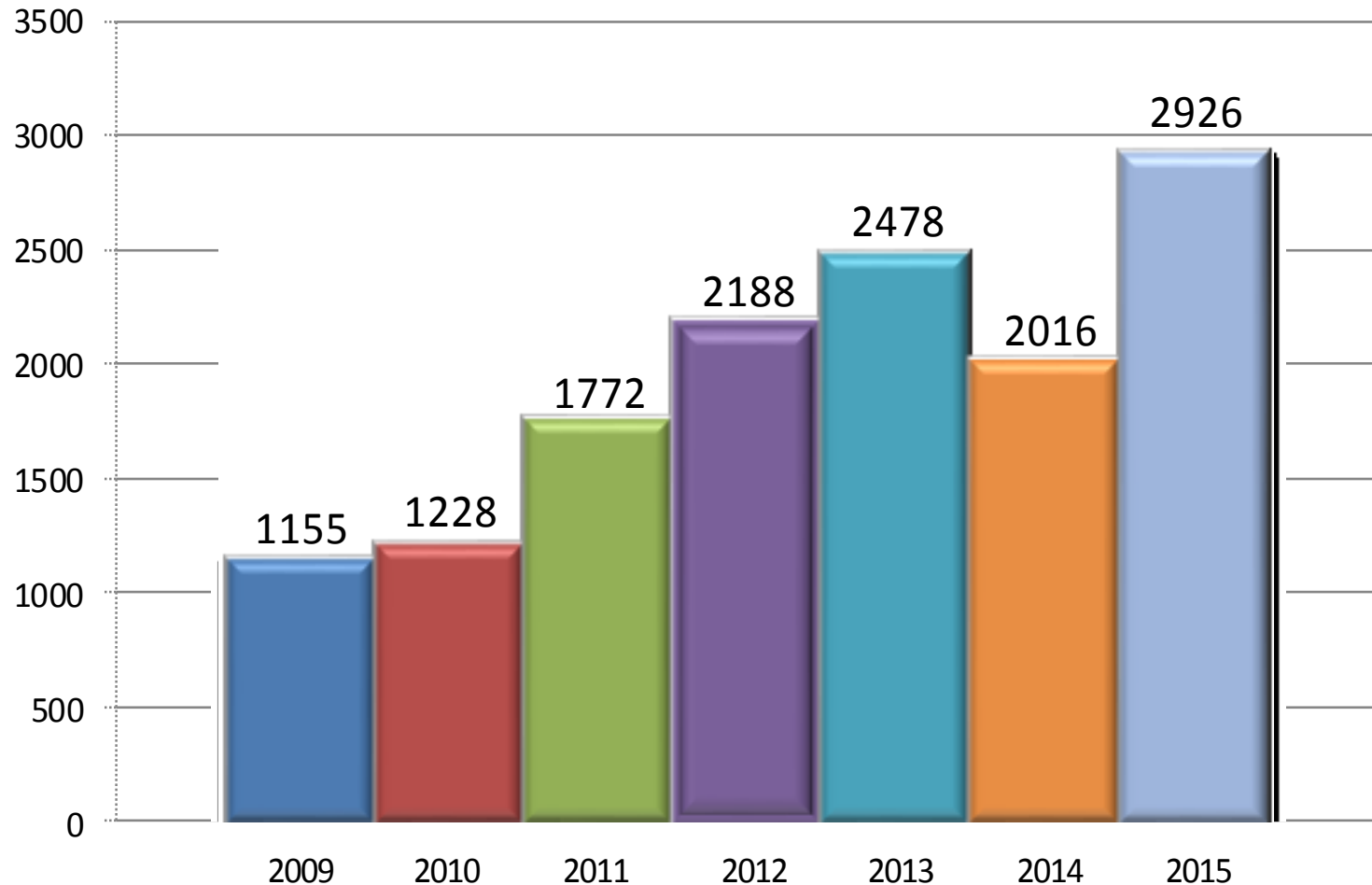


# Agency Affidavits

## Most appeals involve **agency affidavits**

- Simple way to provide evidence
- Sample affidavits available at OOR website
  - Included in AORO Guidebook
  - *Records do not exist*
  - *All responsive records provided*
  - *Request not received*
- **Unverified statements generally not sufficient to meet burden of proof**

# OOR - Appeals Filed, 2009 to 2015

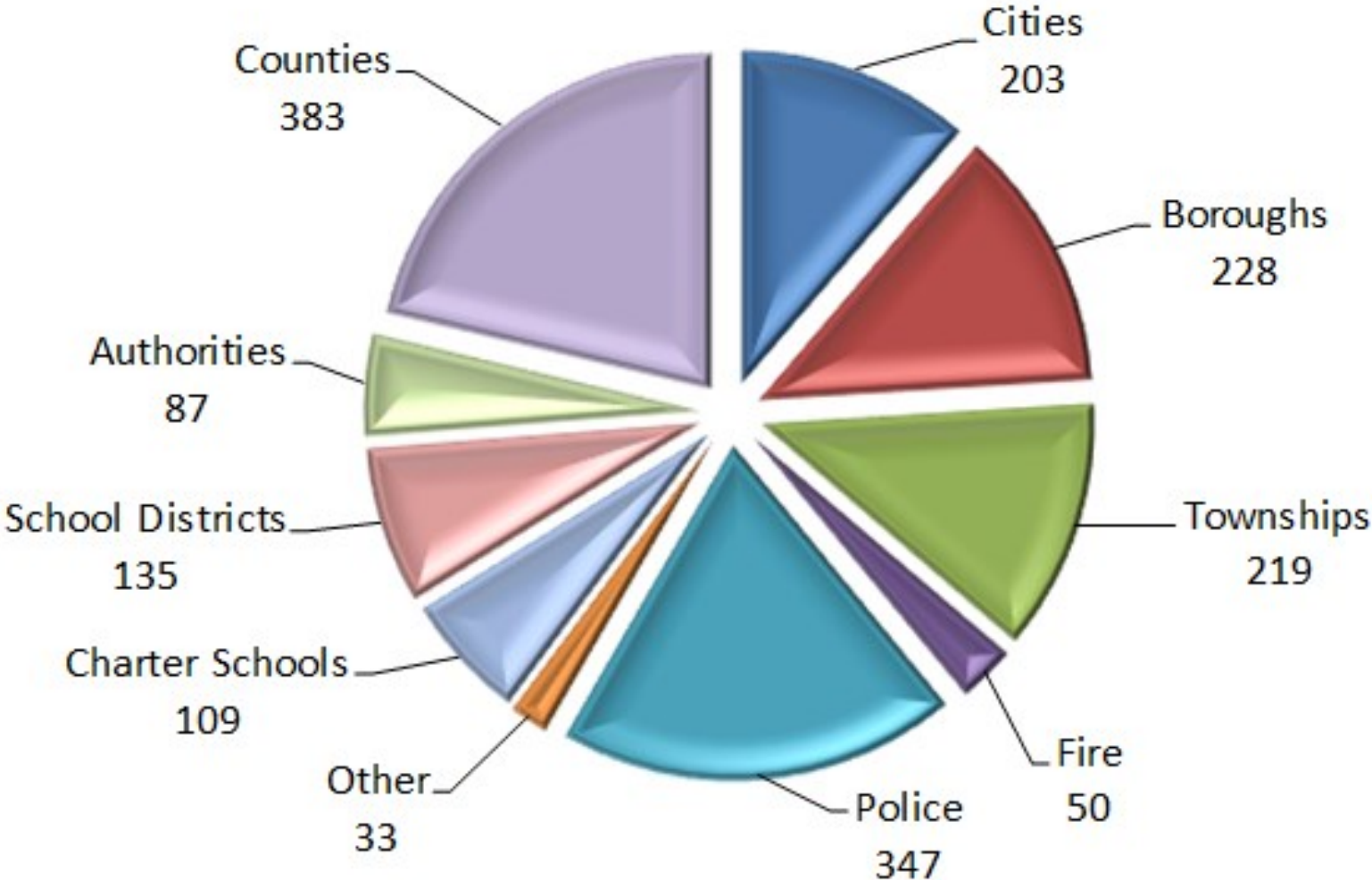


# OOR Caseload

## Thousands of RTK appeals are filed every year

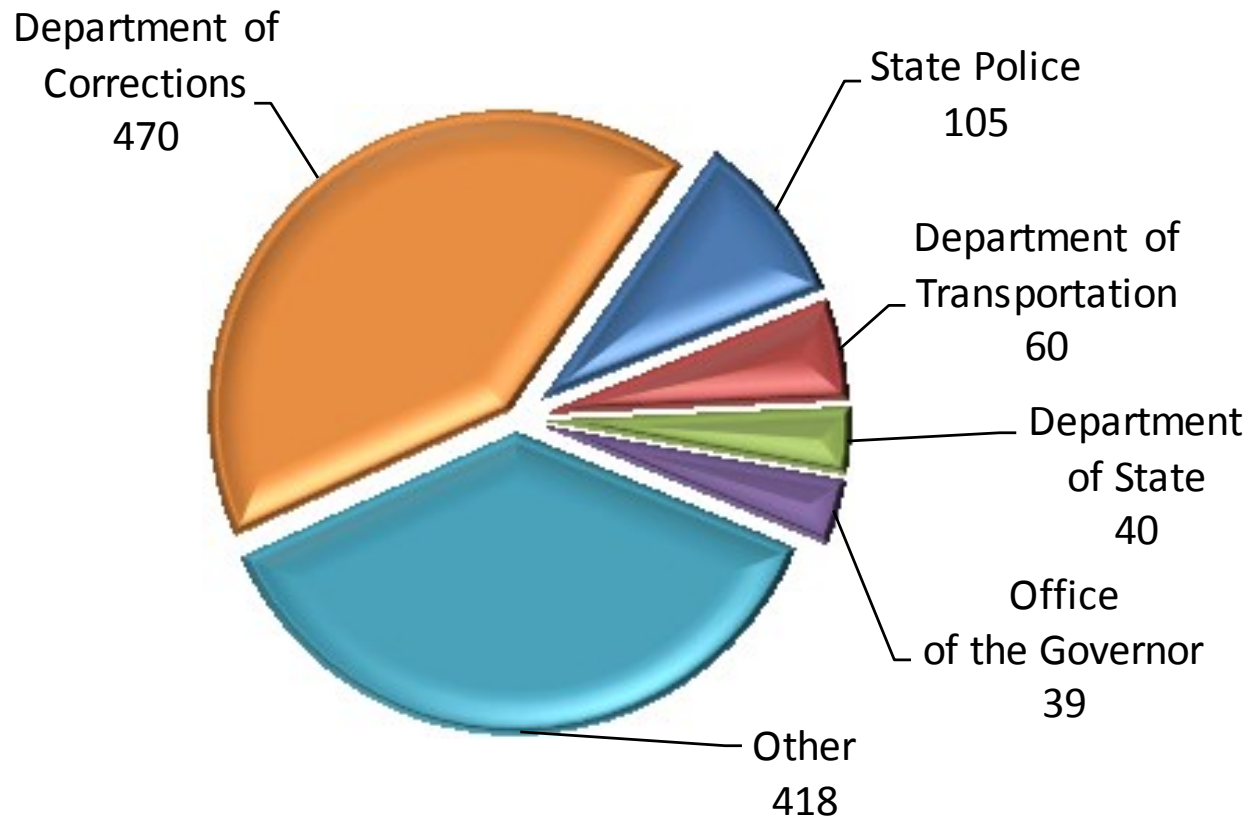
- In 2016, OOR heard **2,103 appeals**
  - That's total *appeals*, not total *requests*
  - No central database of # of requests
- Of the appeals, 61.3% involved local agencies

# 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

# Recent Issues: Home Addresses

## Supreme Court ruling in *PSEA v. OOR*:

- Constitutional right to privacy (Art. 1, Sec. 1)
- Home addresses are subject to balancing test
- If record not expressly public & includes home address, balancing test: Does public interest in disclosure outweigh privacy interest?
  - e.g., Lead contamination in public water
  - e.g., Local use of Section 8 housing funds

# Recent Issues: 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



# Other Recent Issues

## Other recent issues of interest:

- **Specificity:** 3-part test (*PDE v. Post-Gazette*)
  - Subject (activity of agency), Scope (discreet group of records) & Timeframe (finite, most flexible of three parts)
- **“Deleted” emails** (*Dept. of L&I v. Earley*)
  - Must check email servers; not a forensic search
- **Record-keeping** (*DOC v. St. Hillaire*)
  - Unorganized files does NOT = avoiding RTKL

# 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

# Training from the OOR

## Training on the RTKL & Sunshine Act

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

# 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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