



pennsylvania

OFFICE OF OPEN RECORDS

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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
- **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

- 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

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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

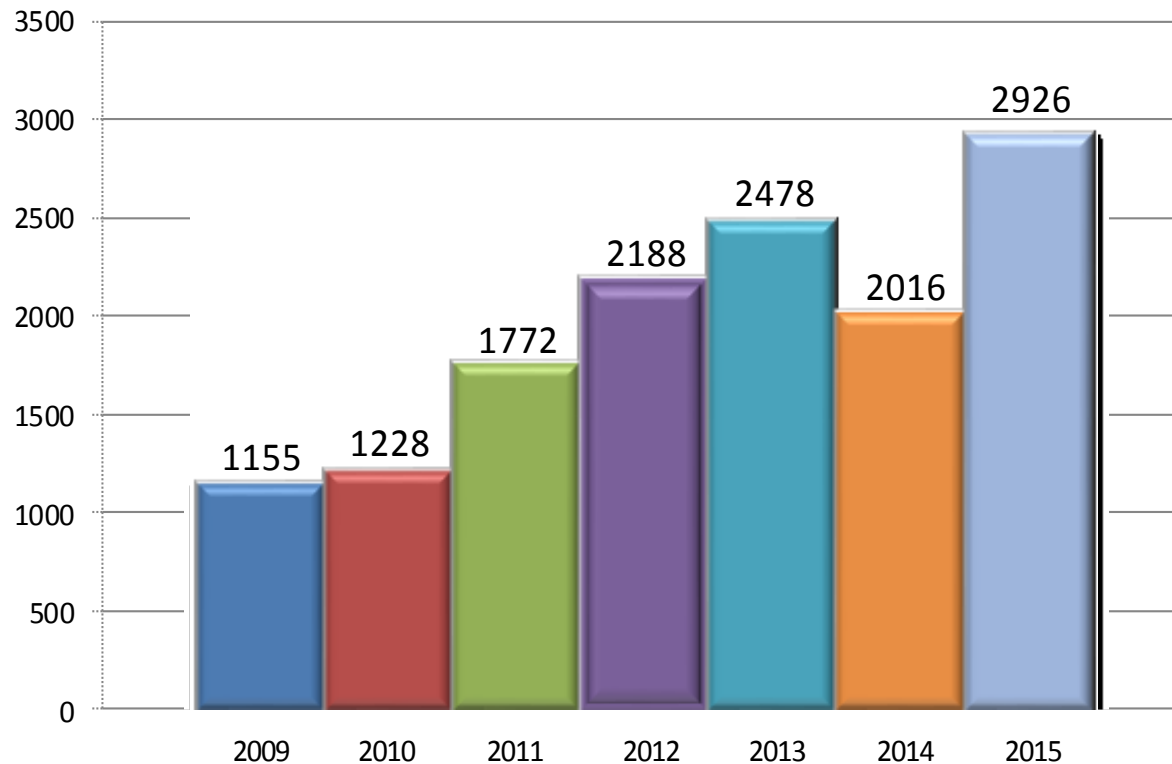
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OOR appeal process is simple

- 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 in 2015

2,926 appeals filed w/ OOR in 2015

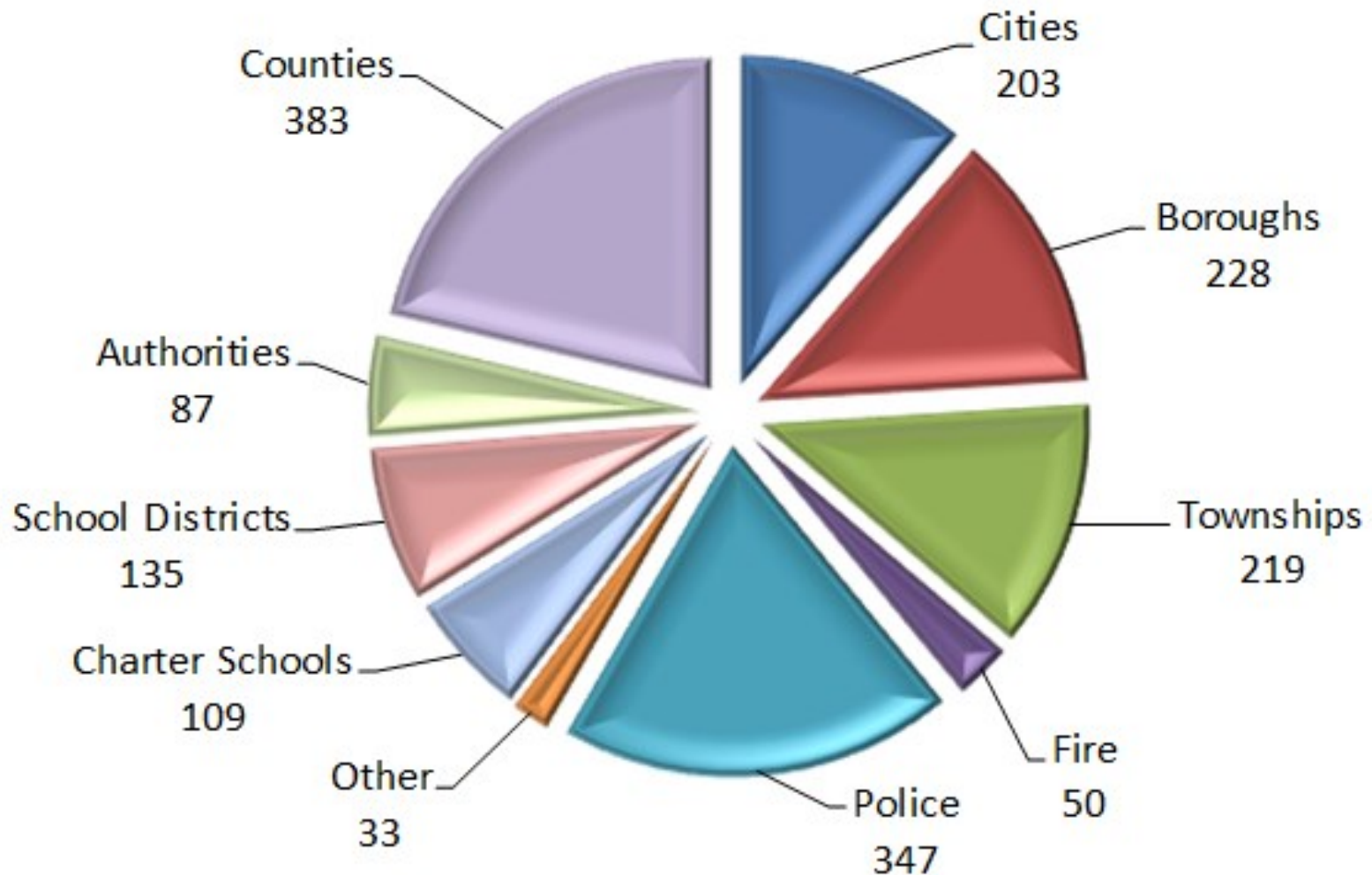


OOR Caseload

Thousands of RTK appeals are filed every year

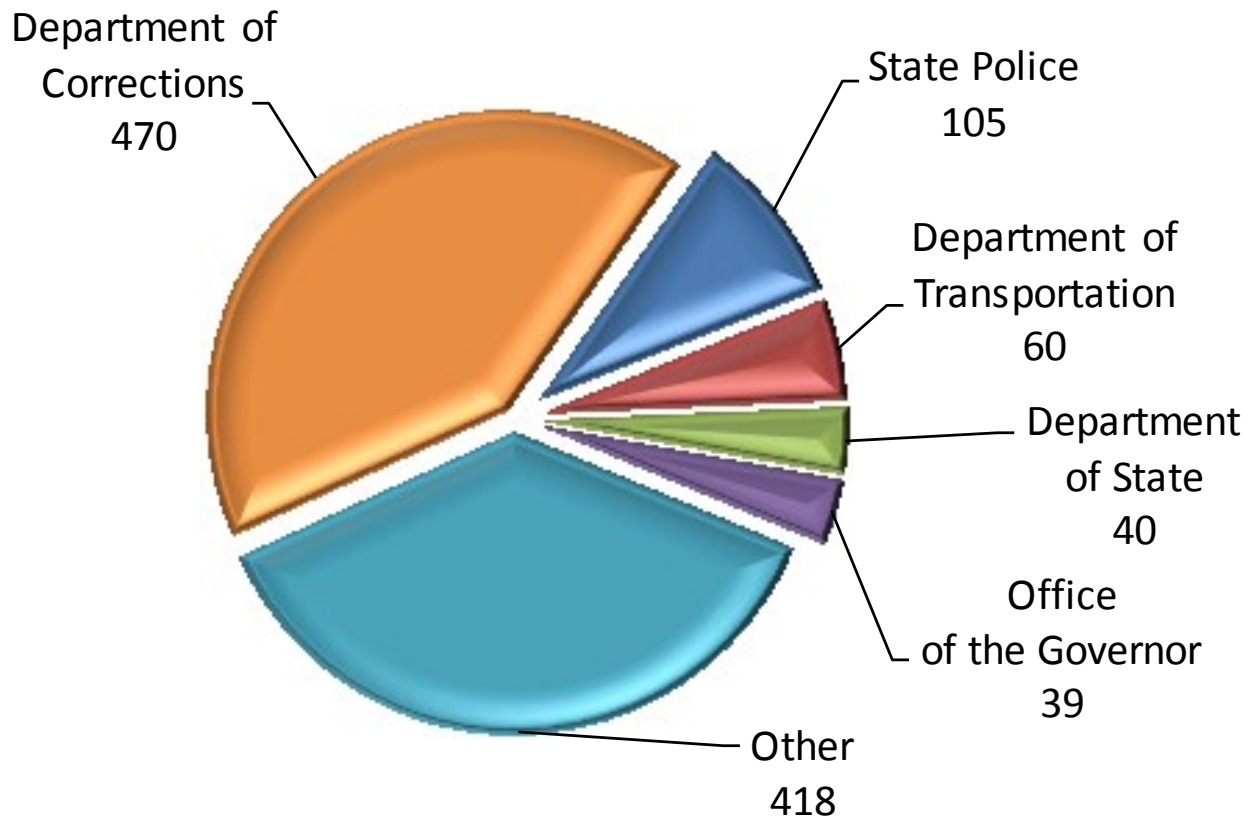
- In 2015, OOR heard **2,926 appeals**
 - That's total appeals, not total requests
 - No central database of # of requests
- Of the appeals, 61.3% involved local agencies

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

OOR is hearing more appeals of video records:

- Dashcams / Mobile Video Recordings (MVRs)
- Bodycams
- Stationary Cameras
- School Bus Cameras

Video Records – Interior of Prison

Halpin v. Luzerne County (2016-1263)

- Requested: Surveillance footage of an incident at the 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)

- Requested: 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.

Video Records – Dashcam Video

Grove v. PSP (2014-0828)

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

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 PD.

Bodycam Videos – Legislation

Senate Bill 976

- Sponsor: Senator Greenleaf (Montgomery Co.)
- Addresses Wiretap Law issue & RTKL issues.
- Status: Pending in the Senate. Not clear if it will advance to the Governor this session. Amendments are possible.

Other RTKL-Related Legislation

Other **bills / recent laws** w/ RTK issues:

- Medical Marijuana
- Uber / Lyft
- Police shootings (when names are released)
- Coroner's records (manner & cause of death)
- Names of lottery winners

Cases of Interest

Other **recent cases** of interest include:

- Home addresses of school employees (PSEA)
- Grand jury records (Hockiemer v. Harrisburg)
- Social media records (Davis v. Butler City PD)
- DA = judicial agency? (Miller v. Centre County)
- Voluminous records (PASSHE v. APSCUF)
- School bus inspections (Hillaire v. PSP)

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

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.
 - Citizens' Guide to the RTKL.
 - AORO Guidebook for agencies.
 - Sample affidavit forms for agencies.

Training from the OOR

Training on the RTKL & Sunshine Act

- OOR website filled with information
 - www.openrecords.pa.gov
- YouTube, podcast, annual training (10/26/16)
- On-site training
 - Details on OOR website
 - Or call George Spiess, 717-346-9903



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THANK YOU

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