



**pennsylvania**

OFFICE OF OPEN RECORDS

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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

# 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

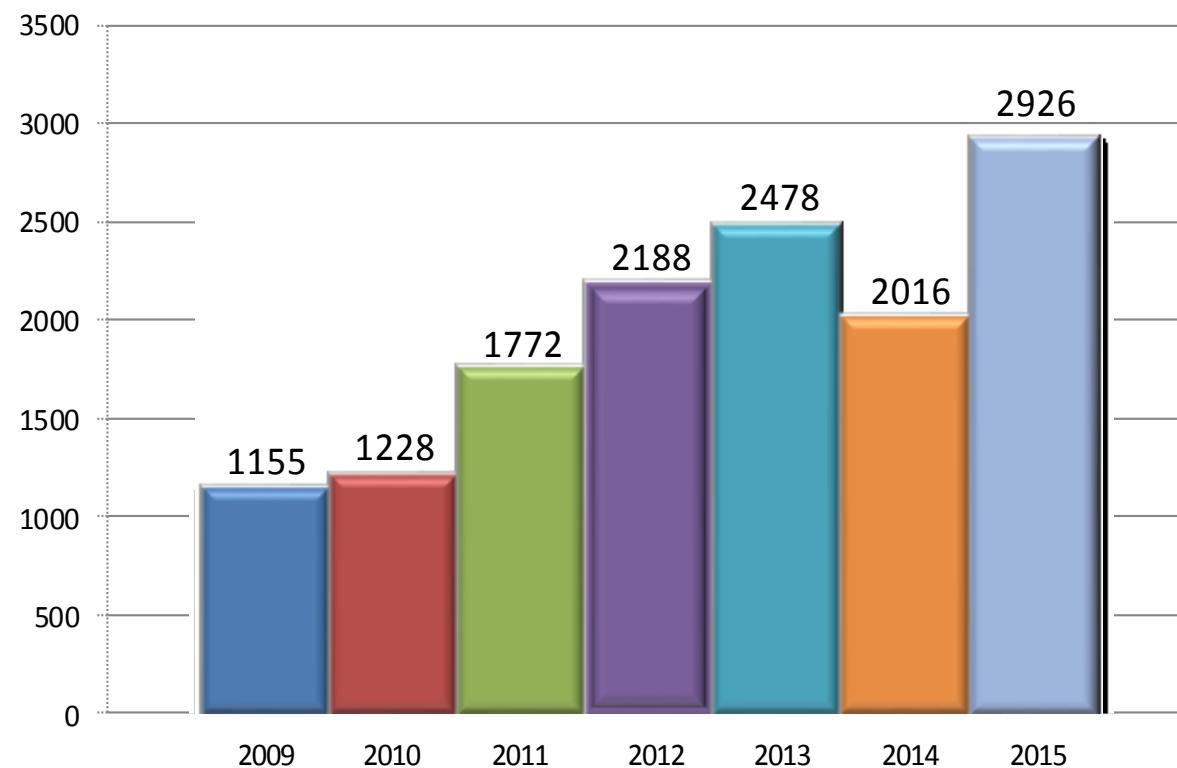
# Office of Open Records

## 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 in 2015

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

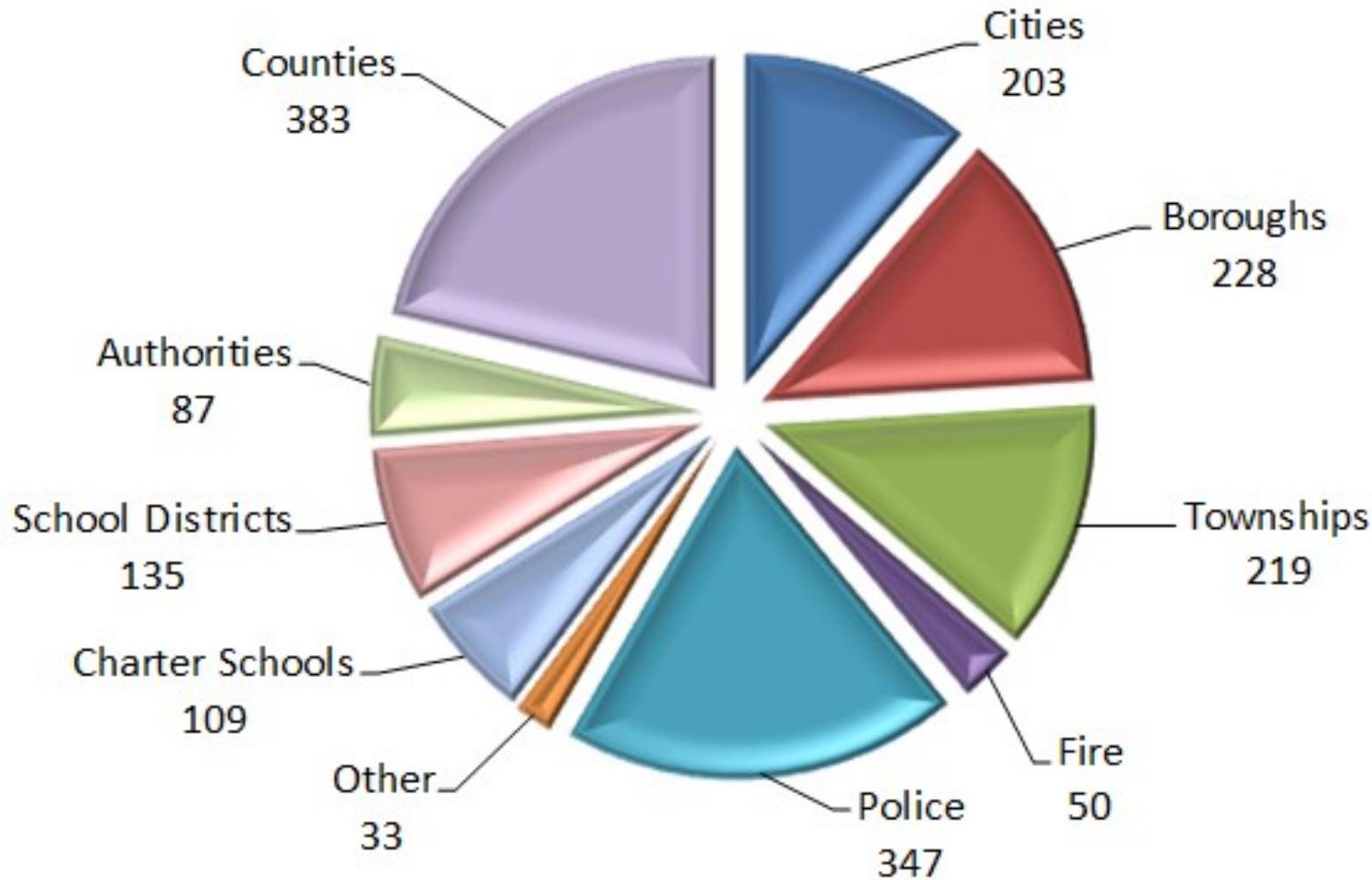


# OOR Caseload

## Thousands of RTK appeals are filed every year

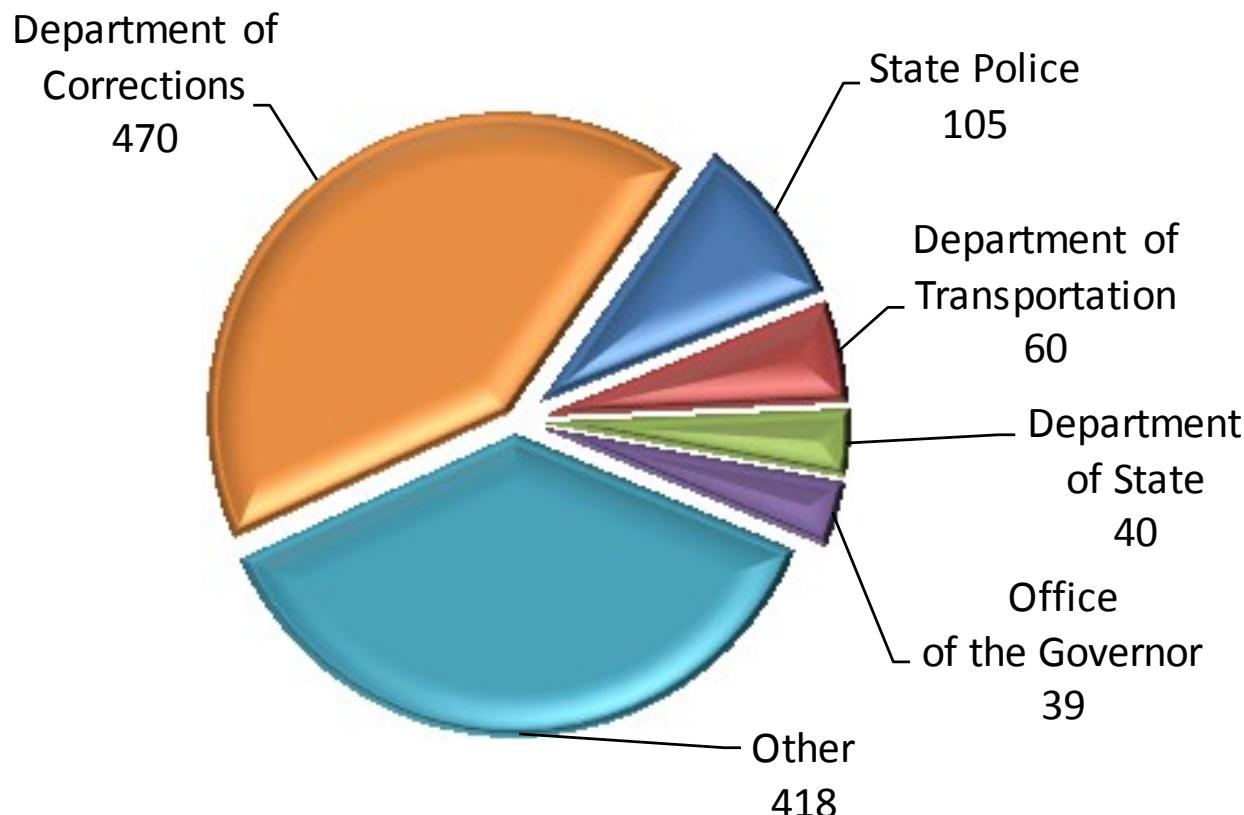
- In 2015, OOR heard **2,926 appeals**
  - That's total appeals, not total requests
  - No central database of # of requests
- Of the appeals, 61.3% involved local agencies

# 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](http://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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