



pennsylvania

OFFICE OF OPEN RECORDS

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Allentown Morning Call

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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 formats
 - Email, paper, audio, video, etc.
- **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”

Records, Not Questions

Seek access to records, don't ask questions

- The RTKL gives access to public records – it's not a way to ask questions
 - Why did the Chairman vote yes?
 - Why did Company A get this contract?
 - How many times were streets plowed in January?
- Agencies may deny RTK requests which ask questions

How to File: Possession

Submit your request to the correct agency

- Submit RTK requests submitted to the agency that actually has the record
- Requests must be addressed to the Agency Open Records Officer (AORO)
- OOR maintains a list of AOROs on our website

How to File: Using the Form

Use the appropriate form to request records

- Agencies may have their own form, but must accept the OOR's Uniform RTK Request Form
- Be as specific as possible when describing the records: Subject, Dates, From/To, etc.
- Requests can be emailed, mailed, faxed, or hand delivered

How to File: Using the Form

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: _____

REQUEST SUBMITTED BY: ☐ E-MAIL ☐ U.S. MAIL ☐ FAX ☐ IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): _____

NAME OF REQUESTER : _____

STREET ADDRESS: _____

CITY/STATE/COUNTY/ZIP(Required): _____

TELEPHONE (Optional): _____ EMAIL (optional): _____

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information.
Please use additional sheets if necessary*

DO YOU WANT COPIES? ☐ YES ☐ NO

DO YOU WANT TO INSPECT THE RECORDS? ☐ YES ☐ NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? ☐ YES ☐ NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? ☐ YES ☐ NO

How to File: Using the Form

Answer all of the questions

- Inspecting records (in person review) vs. receiving copies
- If copies, indicate electronic or hard copy
- Indicate cost restrictions or limits
- Include good contact information – agencies may have questions
 - *Agencies are allowed to ask questions, but cannot withhold records due to intended use*

Who Must Respond to Requests?

Every government agency (state & local) must respond to RTK requests

- Every agency has an AORO
- **Must respond within 5 (agency) business days**
 - Response must be in writing
 - Allow time for mailing
- Can extend final response by 30 calendar days
- Response: grant, deny, or a mix of both

Agency Response: Extensions

Agencies can invoke a 30-day extension

- Within the initial 5-day window, an agency can invoke a **30 calendar day** extension
- You must be notified **in writing**, with a reason and a date to expect a response
- **Keep track of all dates & deadlines** in case you need to appeal

Agency Response: Costs & Format

The OOR has developed a fee schedule

- Up to \$0.25/page for hard copies
- No charge for electronic records
 - *Redacted records may be at \$0.25/page rate*
- Agencies do not have to create a record
- Requesters can photograph records
- Agencies only required to provide records in existing format (hard copy or electronic)

Agency Response: Denials

If an agency denies a request, it must:

- Provide the denial in writing
- Explain what records are being withheld
- Explain why records are being withheld
- Explain how to appeal the denial
- Failure to respond by the statutory deadline is a “deemed denial” and can be appealed

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

Appealing a Denial

Most denials can be appealed to the OOR

- If a request is denied, an appeal can be filed within 15 business days
- Most appeals filed with the OOR
 - Not Attorney General, Auditor General, Treasurer, General Assembly, or Judiciary
 - Denials from local agencies based on criminal investigatory records appealed to county DA (but PSP denials appealed to OOR)

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

Appeal Process

OOR appeal process is simple

- Appeal can be filed using OOR's online form
 - About 10 to 15 minutes to fill out
 - Need copies of original request & agency response
- No lawyer necessary
- OOR assigns Appeals Officer to oversee case
- Both sides can present evidence & argument
- OOR has **30 days** to issue Final Determination

Online OOR Appeal Form

FILE AN APPEAL

Requester

Name:

First Name

Last Name

Address:

Address 1

Address 2

City

Pennsylvania



Zip

Contact:

Phone

Fax

Email

Agency:



Type Agency Name if not in list

Agency Address:

Address 1

Address 2

City

Pennsylvania



Zip

Agency Contact:

Phone

Fax

Email

Records Requested:

I was denied access to the following records

(Provide as much specific detail as possible so the OOR can identify the information. If you run out of space, you may attach a file with more details.)

Online OOR Appeal Form

Request Submitted to
Agency Via:

Dates:

Date of Request



Date of Response



☐ Check if no response

Agency Open Records
Officer:

Name & Title of Person Who Denied Request

0 / 225

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Additional Reasons for
Appeal:

(If you run out of space, you may attach a file with more details.)

Attach Files:

Browse ...

+ Add



Remove All

Maximum file attachments: 10

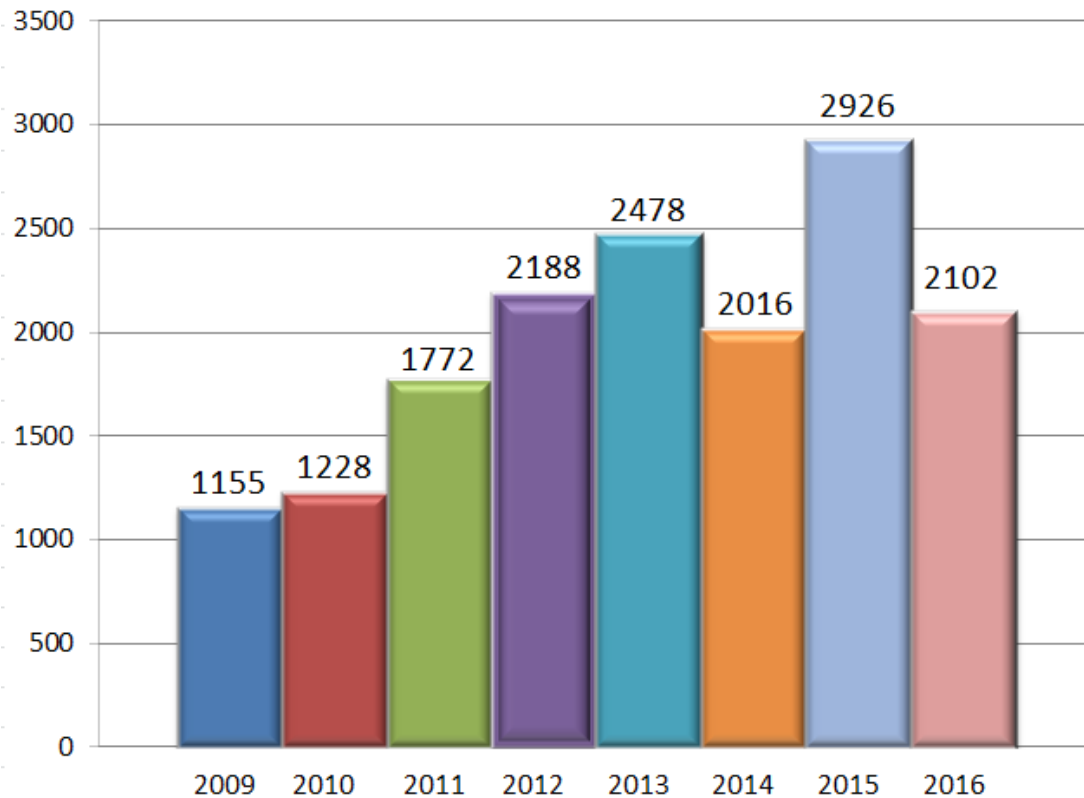
Maximum file size: 10MB

Allowed file types: pdf, doc, docx, rtf, txt, xls, xlsx, jpg, png, gif, tiff

- ☐ I have attached a copy of my request for records.
- ☐ I have attached a copy of all responses from the Agency regarding my request.
- ☐ I have attached any letters or notices extending the Agency's time to respond to my request.
- ☐ I hereby agree to permit the OOR an additional 30 days to issue a final order.
- ☐ I am interested in resolving this issue through OOR mediation. *(This stays the initial OOR deadline for the issuance of a Final Determination. If*

OOR - Appeals Filed by Year

2,102 appeals filed w/ OOR in 2016

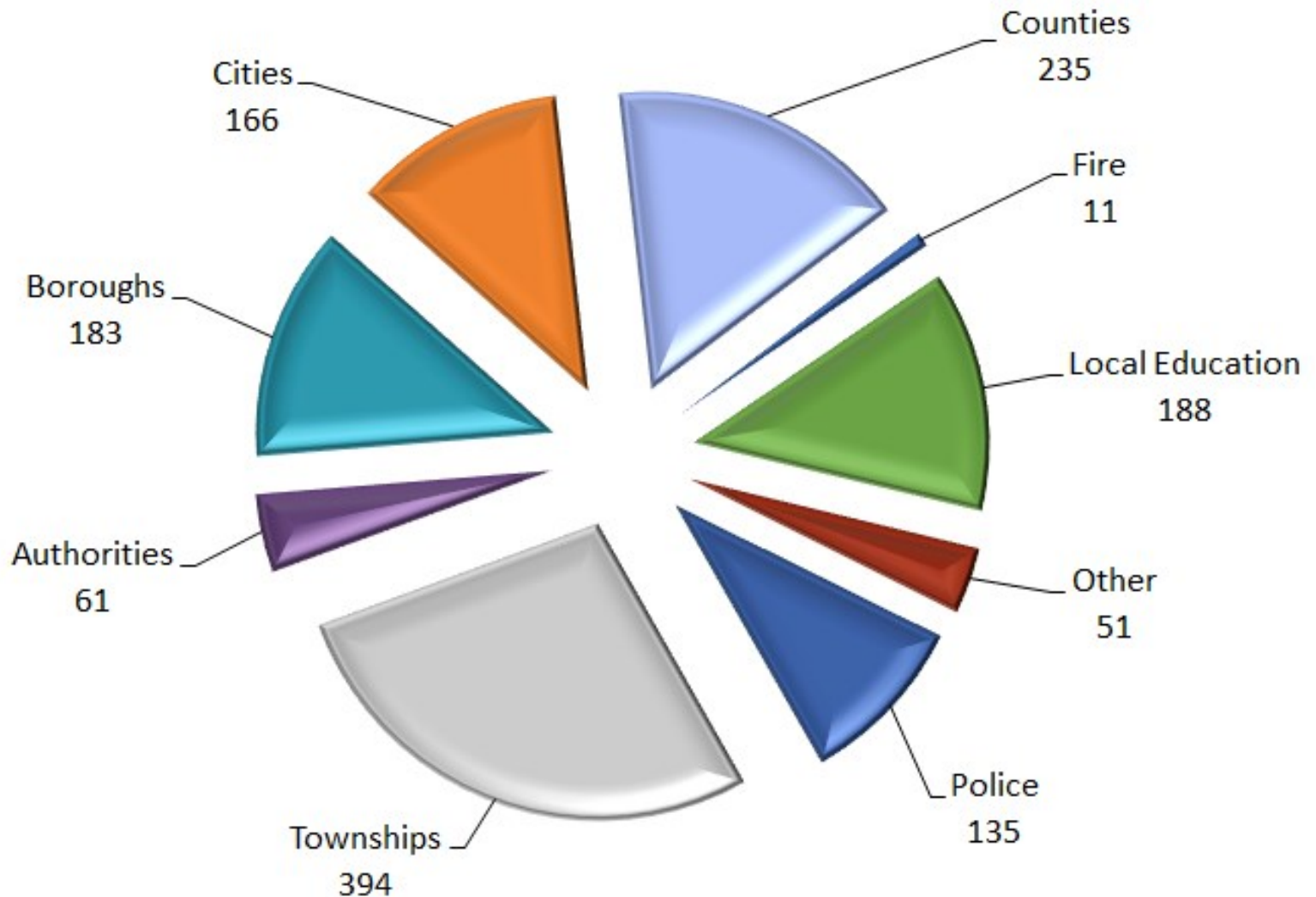


OOR Caseload

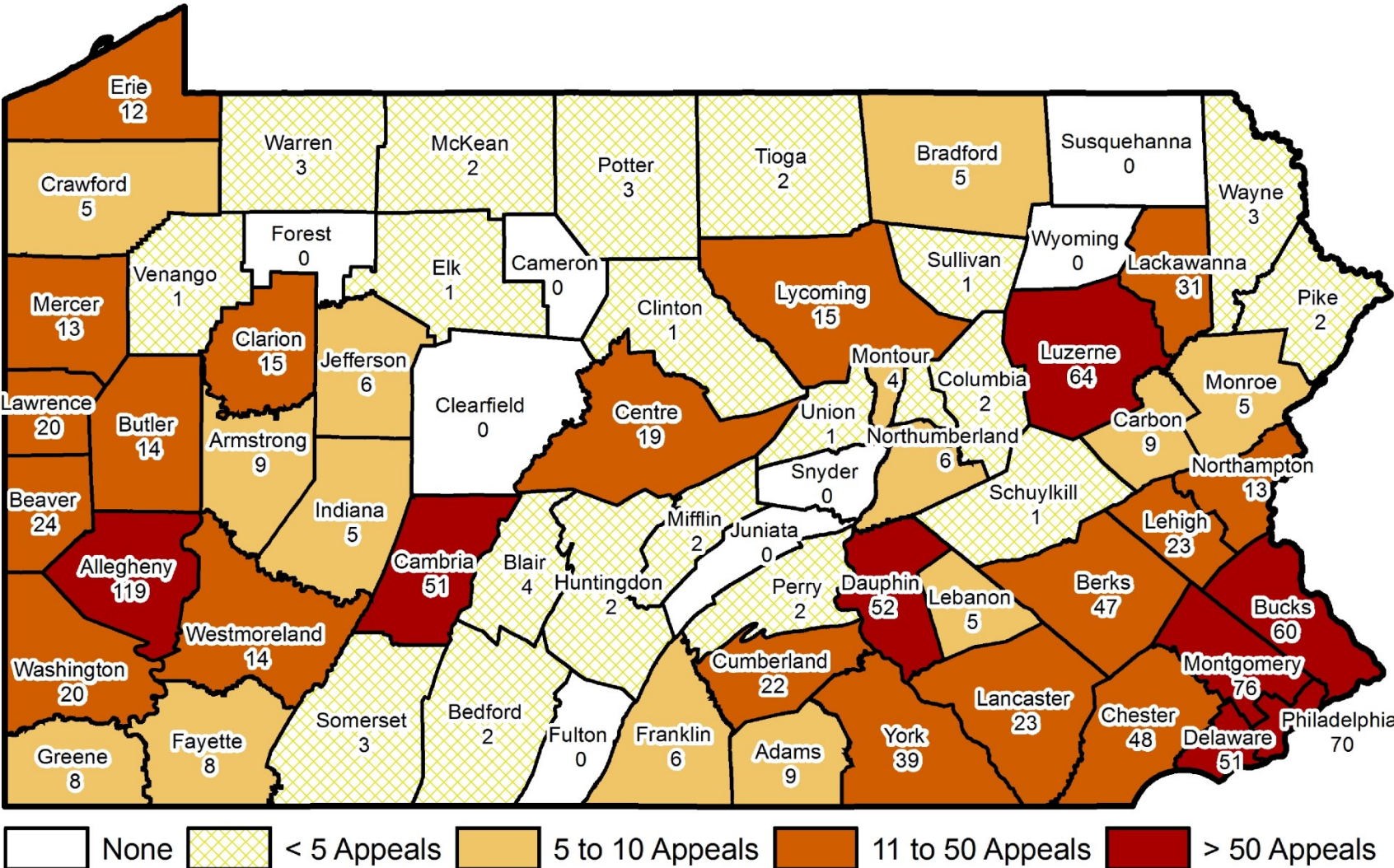
Thousands of RTK appeals are filed every year

- In 2016, OOR heard **2,102 appeals**
 - That's total appeals, not total requests
 - No central database of # of requests
- Of the appeals, 67.7% involved local agencies

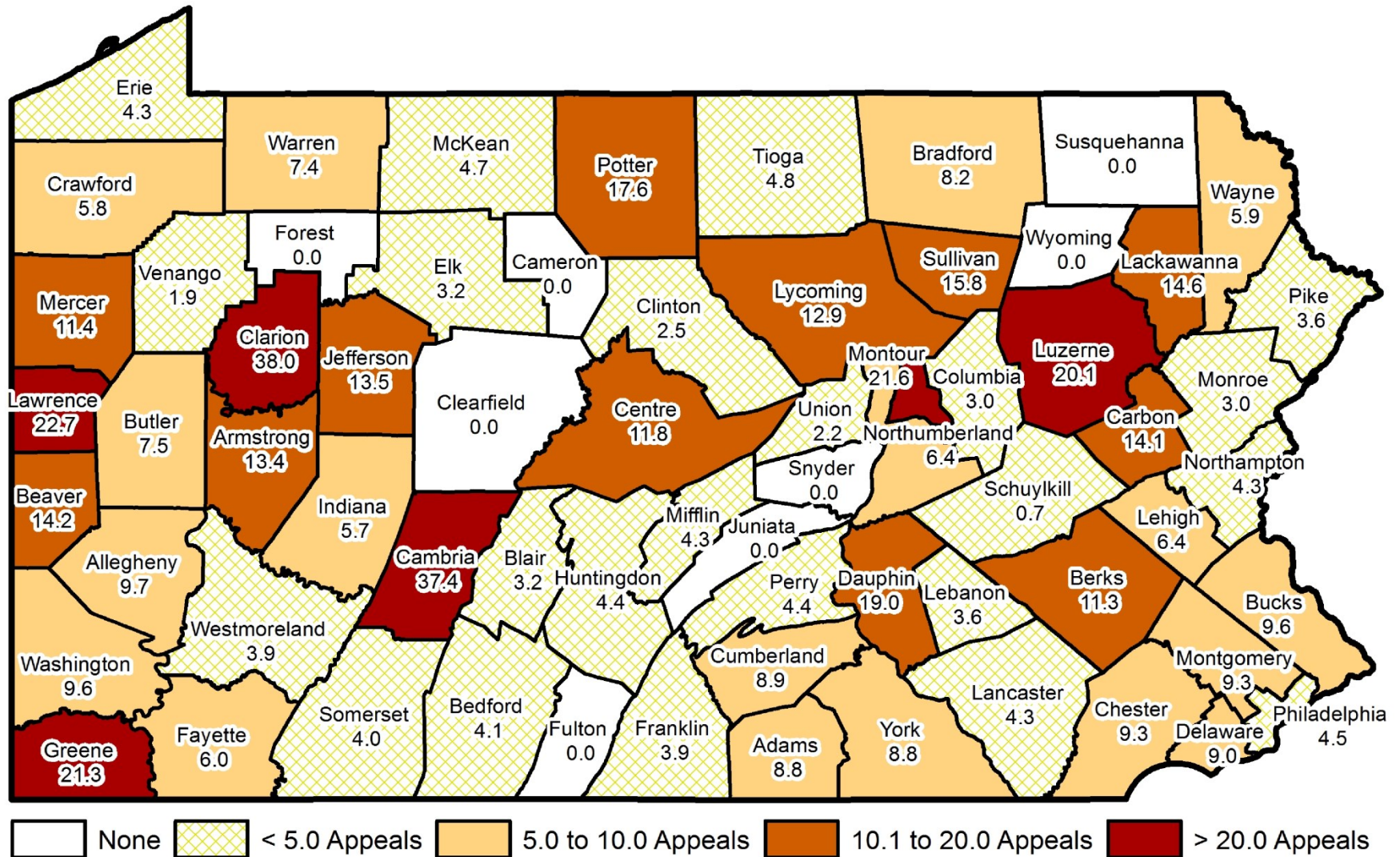
Local Agency Appeals in 2016



Local Agency Appeals in 2016

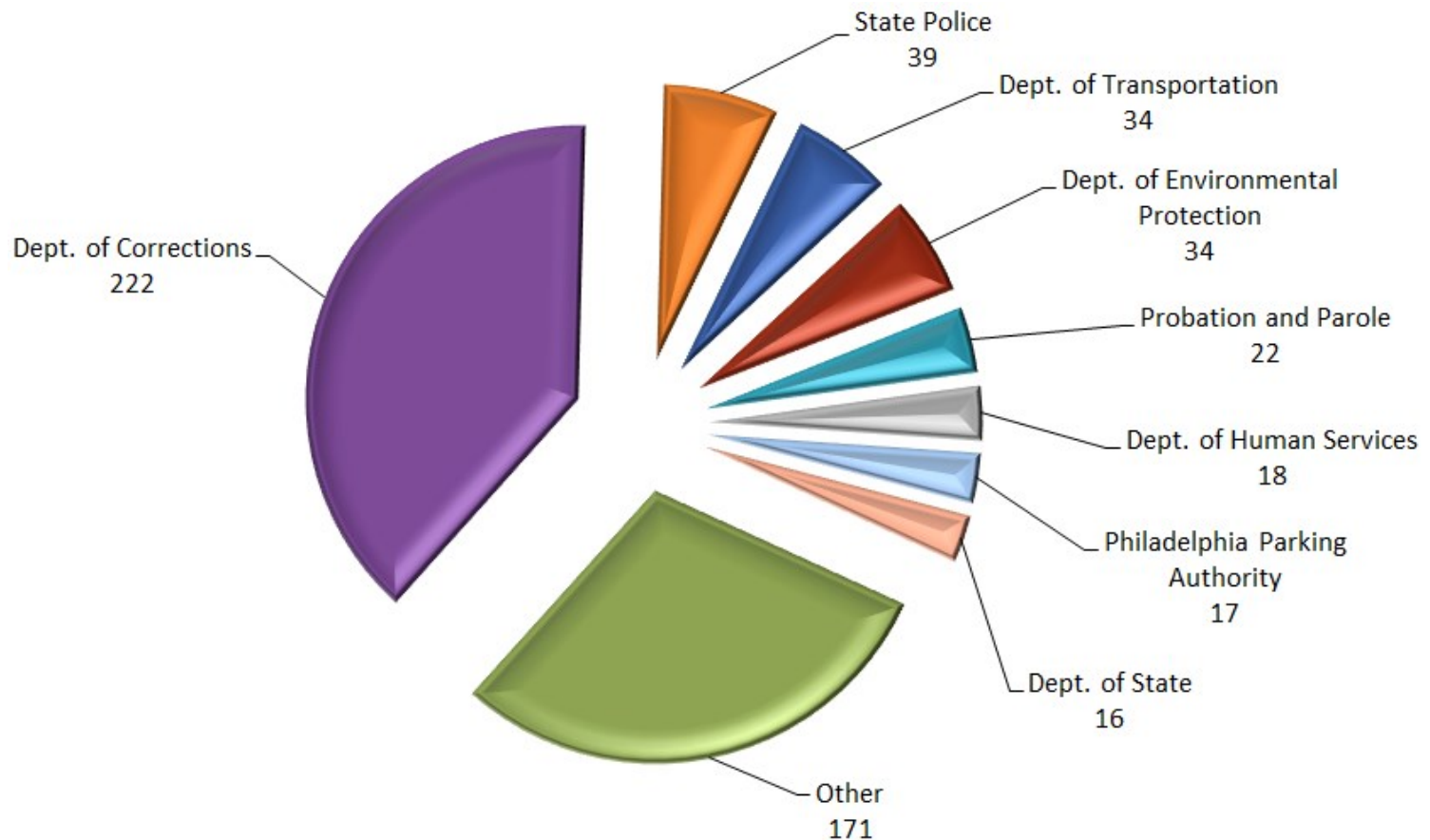


Local Appeals in 2016: Per Capita



State Agency Appeals in 2016

573 appeals involving state agencies in 2016



Other RTKL-Related Legislation

Other bills & recent laws w/ RTK issues:

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

Act 30 of 2016

Prohibits release of certain 911 information:

- “Individual identifying information” of an individual calling a 911 center, victim or witness
- Name, telephone number and home address
- Agency or court can decide to disclose
- **In every case**, the street block identifier, the nearest cross-street, and/or the nearest mile marker is public

Act 30 of 2016

§ 5399. Prohibited release of information.

(a) Prohibition.--Notwithstanding any other law, in a response to a request under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, a PSAP may not release individual identifying information of an individual calling a 911 center, victim or witness.

(b) Applicability.--This section shall not apply if the PSAP or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

(c) Definition.--As used in this section, the term "identifying information" includes name, telephone number and home address. The term does not include:

(1) The location of the incident, unless the location is the caller's, victim's or witness's home address or the disclosure of the location would compromise the identity of the caller, victim or witness.

(2) The street block identifier, the cross street or the mile marker nearest the scene of the incident, which shall be public.

OOR's Mediation Program

Goal: Resolve more cases informally

- **49 successful mediations** 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
- 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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