



pennsylvania

OFFICE OF OPEN RECORDS

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Right-to-Know Law Basics

Effective Jan. 1, 2009

- Key changes:
 - Presumption of openness:
 - Every agency record is presumed to be public
 - Agency bears burden to prove record is not public
 - Creation of the Office of Open Records (OOR)
 - Administer the RTKL, provide training
 - Issue Final Determinations for appeals

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

Agency Open Records Officer

AORO responsibilities include:

- Must post contact information
- Must have a form for filing Open Records Requests (OOR provides a Standard Form)
- Instruct all staff to forward requests to the AORO ASAP
- Notify the OOR who the AORO is

Prohibitions – Section 1308

Agencies may not adopt a policy which:

- Limits the number of records which may be requested or made available for inspection or duplication; or
- Requires disclosure of the purpose or motive in requesting access to records

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, texts, social media, 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”

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
- Must notify requester **in writing**, with a reason and a date to expect a response
- **Track all dates & deadlines** in case an appeal is filed

Law Enforcement Exceptions

Investigative records & 911 recordings

- 708(b)(16) – Criminal Investigations
 - Does not include blotters or incident logs
- 708(b)(17) – Non-Criminal Investigations
- **708(b)(18) – Emergency dispatch (911) recordings**
 - Public interest disclosure by agency or court

Section 708(b)(18)

Exception for 911 recordings:

1. Records or parts of records, **except time response logs**, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.
2. This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

Act 30 of 2016

Prohibits the release of certain 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.

Agency Response: Costs

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*
- Requesters can photograph records
- No charge for labor, including redaction
- Other legislated charges take precedent
 - e.g., accident reports

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

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
 - Denials from local agencies based on criminal investigatory records (708(b)(16)) appealed to county District Attorney

Criminal Investigative Records of a Local Law Enforcement Agency

Section 503(d)(2):

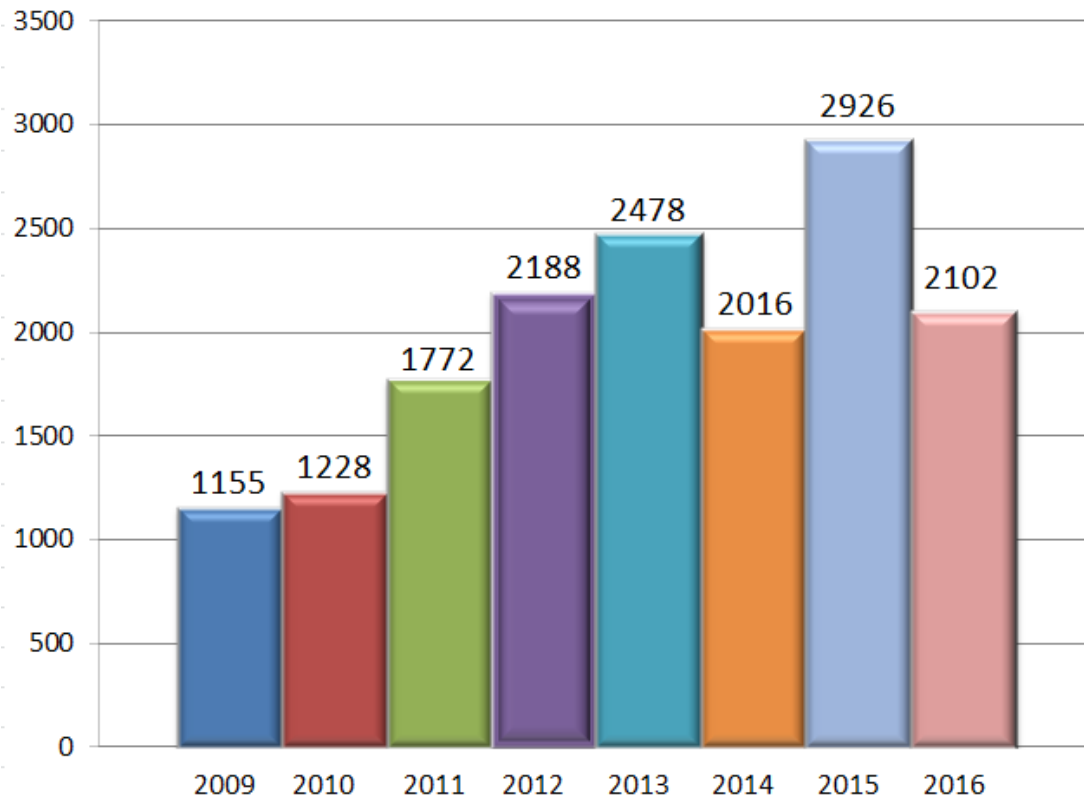
- “The district attorney of a county shall designate one or more appeals officers to hear appeals ... relating to access to criminal investigative records in possession of a local agency of that county.”
- OOR transfers such cases to the DA
- OOR hears cases involving PSP

RTKL is NOT a Confidentiality Law

- You may release records outside of the RTKL
- An agency may exercise its discretion to make any otherwise exempt record accessible if:
 - Disclosure is not prohibited by federal or state law or regulation (e.g., CHRIA); and
 - The record is not protected by privilege; and
 - The agency head determines that public interest favoring access outweighs any interest favoring withholding.

OOR - Appeals Filed by Year

2,102 appeals filed w/ OOR in 2016

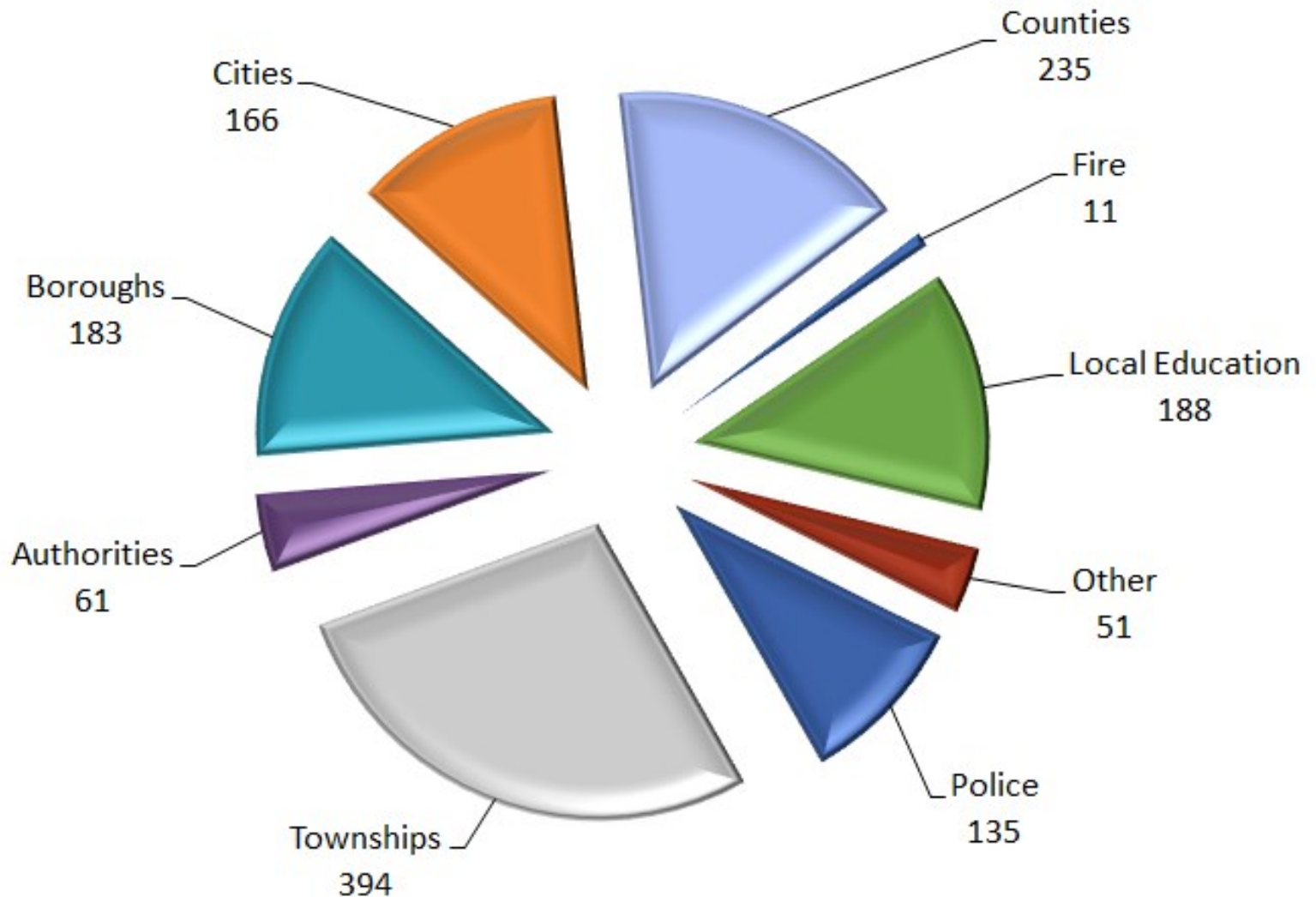


OOR Caseload

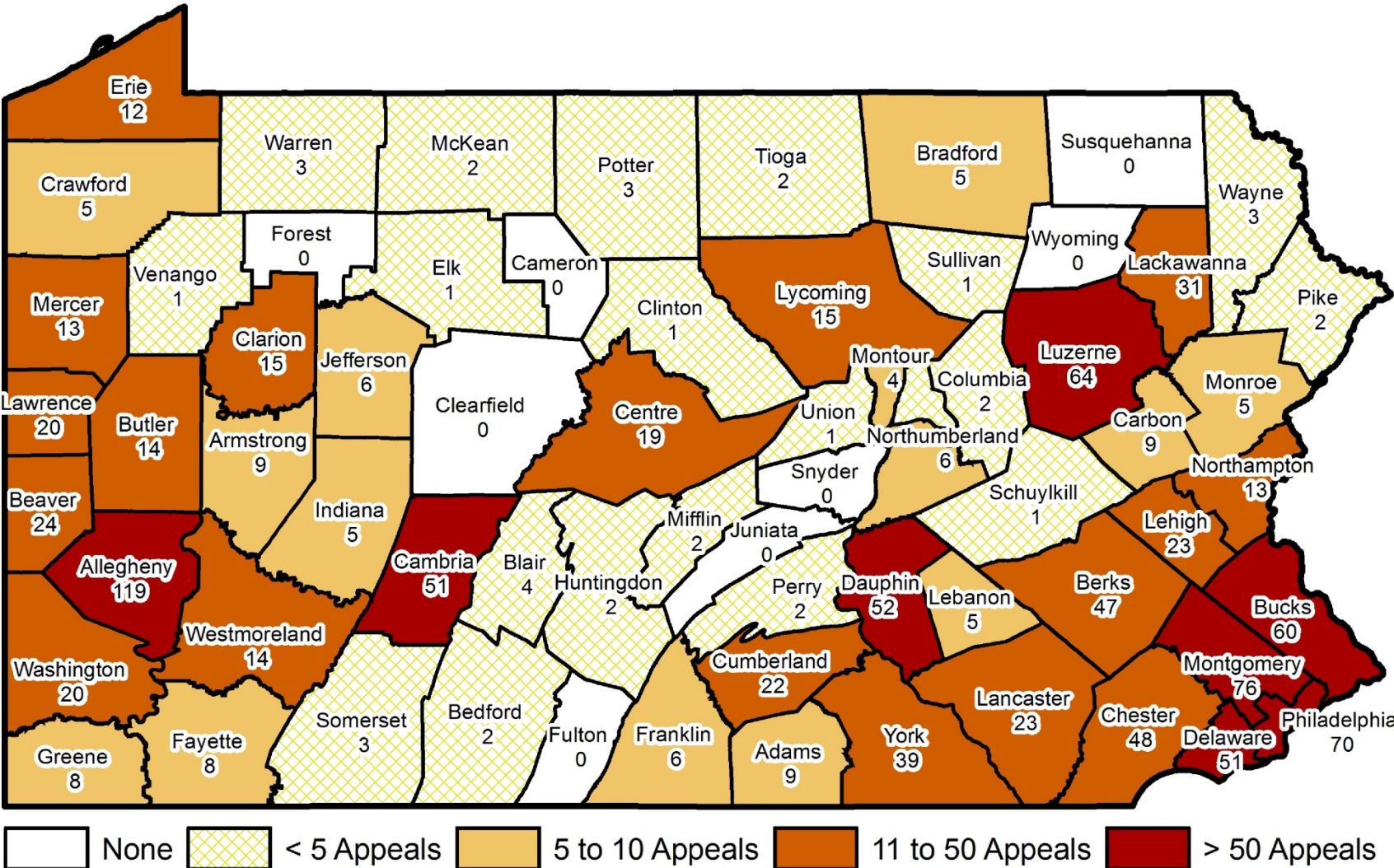
Thousands of RTK appeals are filed every year

- 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

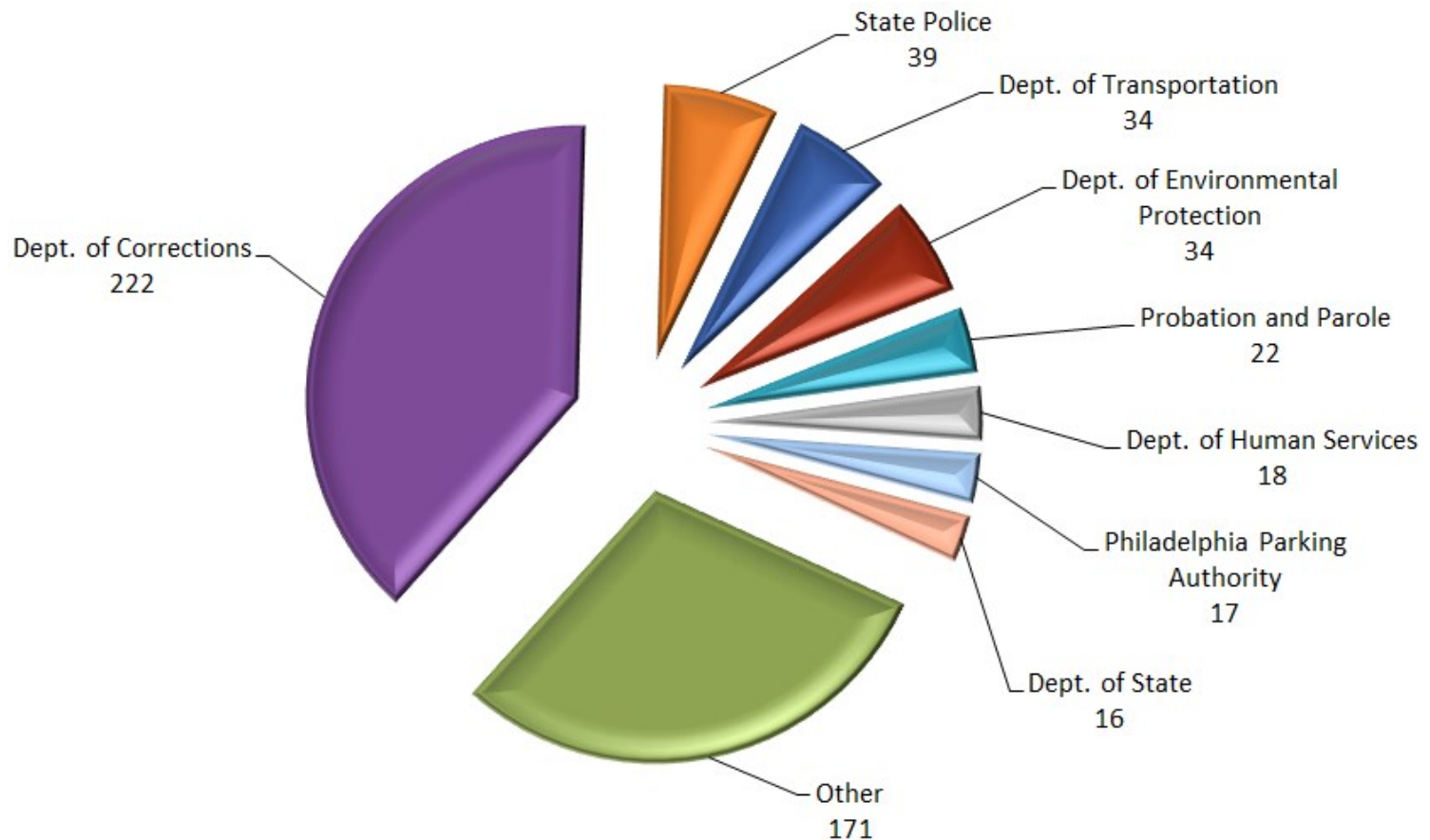


Local Agency Appeals in 2016



State Agency Appeals in 2016

573 appeals involving state agencies in 2016



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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