



**pennsylvania**

OFFICE OF OPEN RECORDS

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## Public Utility Commission CLE

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# Right-to-Know Law Basics

## Key elements of the RTKL:

- All gov't records presumed to be open
- If it wants to withhold a record, agency bears burden of proving it's not public
- Office of Open Records (OOR)
  - Decides RTKL appeals for most agencies
  - Provides training on RTKL & Sunshine Act

# 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, 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**

- Each agency must have an Agency Open Records Officer (AORO)
- **Must** respond within 5 (agency) business days
  - Response must be in writing
- *Can extend final response by 30 calendar days*
- Response: grant, deny, or a mix of both

# **Agency Open Records Officer**

## **AORO responsibilities include:**

- Must post contact information
- Receives & processes RTK requests
  - All staff should forward RTK requests to AORO
- Gathers & reviews responsive records
- Issues responses to RTK requests
- Tracks all dates & deadlines

# Agency Response: Costs

## OOR required to issue 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*
- No charge for labor, including redaction
- Requesters can photograph records
- 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, except:
  - Judiciary
  - General Assembly
  - Statewide Row Offices
  - Local Law Enforcement Records

# **RTKL is NOT a Confidentiality Law**

## **Records may be released 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; and
  - The record is not protected by privilege; and
  - The agency head determines that public interest favoring access outweighs any interest favoring withholding.

# Third-Party Records

**Records submitted to gov't agencies by third-parties go through the same test**

- Info submitted to a gov't agency by a third-party contractor also **presumed to be public**
- Common exceptions that may apply:
  - (b)(10): internal, predecisional deliberations
  - (b)(11): trade secrets & conf. proprietary info
  - (b)(26): financial information of a bidder

# Third-Party Contractor Records

**Some third-party records NOT submitted to  
gov't agencies may still be public**

- Section 506(d): “A public record ... in the possession of a party with whom the agency has contracted to perform a governmental function ... and **which directly relates to the governmental function** and is not exempt ... shall be considered a public record of the agency for purposes of this act.”

# Requests for Trade Secrets

**Contractors are required to give agencies notice that submitted info includes a trade secret**

- Section 707(b): “An agency shall notify a third party of a request for a record **IF** the third party provided the record **AND** included a written statement ... that the record contains a trade secret or confidential proprietary information.”

# **Contracts Available**

## **Online State Contract Database**

- All state agency contracts > \$5,000
- <http://contracts.patreasury.gov/>

## **Local contracts also available – but not online**

- Request under RTKL
- Some redactions may be made
- Can appeal denials/redaction to the OOR

# **Procurement Records Available**

## **Procurement Provisions**

- Records related to agency procurement or disposal of supplies, services or construction are available under RTKL after...
  - A contract is awarded, or
  - All bids are rejected

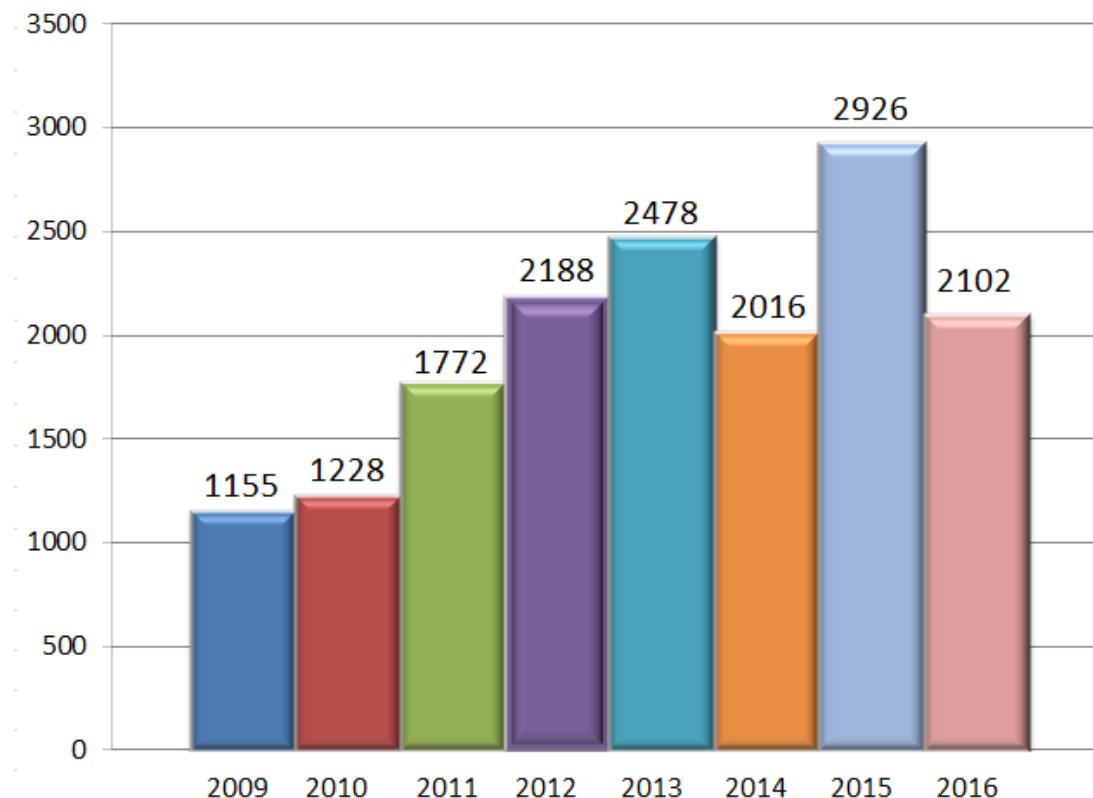
# Record Retention

## 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"*

# OOR - Appeals Filed by Year

**2,102 appeals filed w/ OOR in 2016**



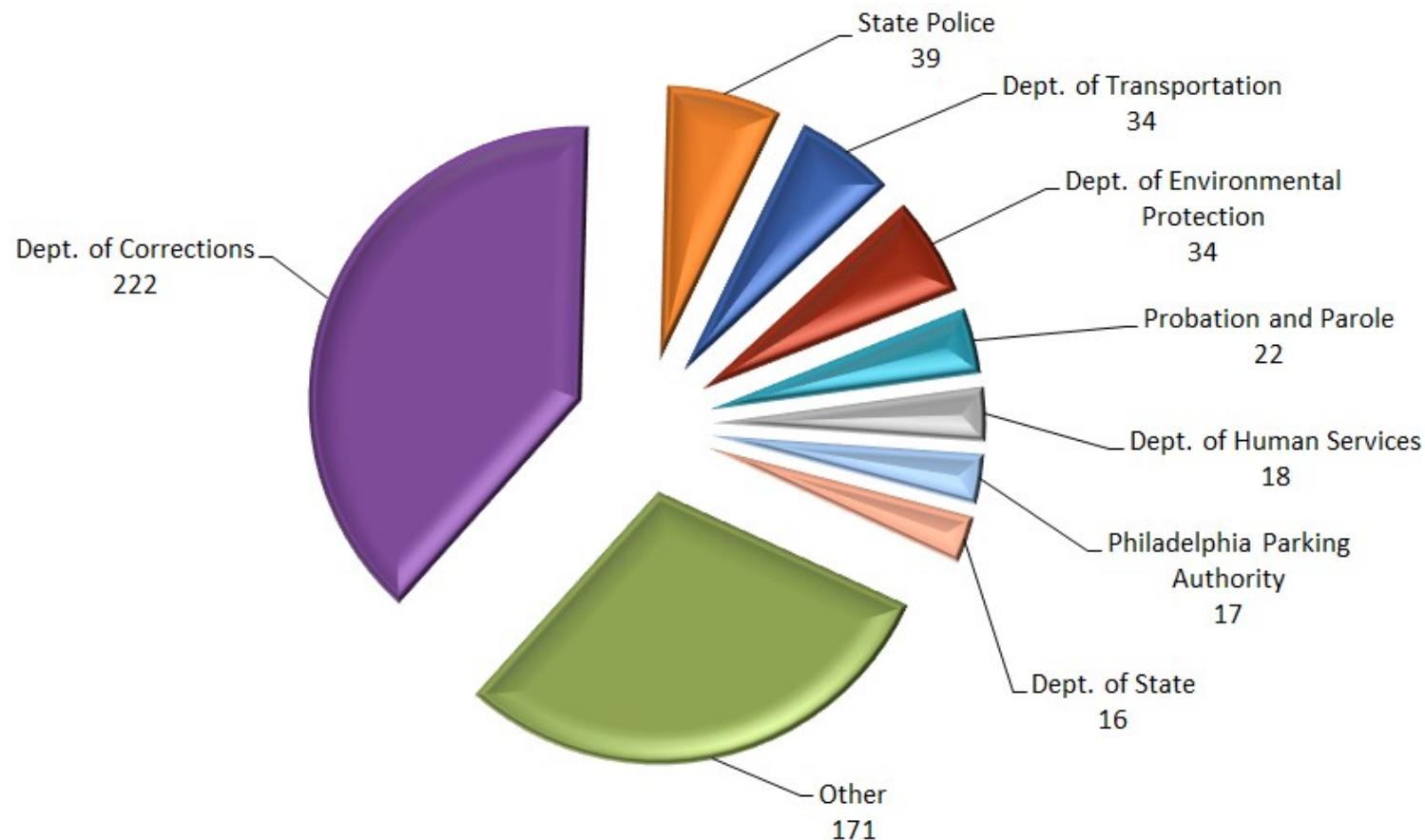
# OOR Caseload

## 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

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

# OOR 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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