

February 12, 2018

The Honorable Robert B. Mensch  
Chairman, Legislative Budget and Finance Committee  
Room 400 Finance Building  
613 North St.  
Harrisburg, PA 17120

Re: Costs to Implement the Right-to-Know Law

Senator Mensch and Members of the Committee:

During the nearly two decades in which I worked for the Senate of Pennsylvania, I greatly appreciated the consistent high quality of reports prepared by the Legislative Budget and Finance Committee (LBFC). I'm pleased to report that "Costs to Implement the Right-to-Know Law," conducted pursuant to House Resolution 2017-50, maintains that high quality.

LBFC conducted a statewide survey of Agency Open Records Officers (AOROs), the people most directly responsible for implementing the Right-to-Know Law (RTKL) on a daily basis. Not long before the LBFC survey, the Office of Open Records (OOR) conducted its own (by design less detailed) survey of AOROs.<sup>1</sup> Unsurprisingly, the results from each survey dovetail quite nicely.

I'm particularly pleased to note that the LBFC survey found that more than half of the agencies surveyed reported the annual cost of complying with the RTKL to be less than \$500. In fact, 92 percent of agencies reported the annual cost to be less than \$10,000.<sup>2</sup> That strikes me as a very reasonable cost to carry out the legislative goal of making government records far more widely available to the residents of Pennsylvania.

LBFC also found that about 35 percent of RTKL requests were identified as being for a commercial purpose. Although the OOR survey did not ask a similar question, that result is generally in line with our anecdotal experience. A number of bills pending in the General Assembly would allow agencies to charge for the staff time associated with responding to commercial requests. I think such an approach has merit and should be pursued.

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<sup>1</sup> OOR survey results are available at <https://openrecords.pa.wordpress.com/2018/01/04/first-ever-survey-of-aors/>

<sup>2</sup> All of the estimates include staff time calculated on an hourly basis, so actual *expenditures* by agencies to comply with the RTKL would be even less.

Regarding burdensome RTKL requests, LBFC's conclusion that "the issue of burdensome requests appears to be highly dependent on what the agency perceives to be burdensome" also matches the OOR's anecdotal experience.

The report includes eight recommendations from LBFC, four for the General Assembly and four for the OOR. I support all eight recommendations (one, as noted below, with some reservations). In more detail:

#### LBFC Recommendations for the General Assembly

- 1. Require agencies to provide AORO contact information to include name, telephone number, email address, and physical address to the OOR annually or whenever there is a change in the information.**

The OOR currently collects this information on a very informal basis. However, a statutory mandate for agencies to provide AORO contact information to the OOR, combined with technological improvements already in development (i.e., an online AORO database), would allow us to proceed in a far more efficient manner.

- 2. Require agencies to prominently post required RTKL information on their websites and specifically define AORO contact information to include the name, telephone number, email address, and physical address of the AORO.**

Like LBFC, the OOR has found that it can sometimes be difficult or impossible to locate AORO information on an agency website.<sup>3</sup> In addition to supporting a new statutory requirement that the information be "prominently" posted, the OOR will continue to emphasize this as a best practice in our training.

- 3. Require all state and local government AOROs to attend one OOR training course on the RTKL annually, which could be attended on-site or online.**

The OOR recently moved to a new office on the 16<sup>th</sup> floor of 333 Market St. One of the benefits of the new space is that we have an on-site training room where we will be able to conduct regular free training sessions. We will also be able to offer free training via webinars in the relatively near future. Should the RTKL be changed to require all AOROs to attend at least one OOR training course annually, we will be well-positioned to make such courses easily accessible across the state.

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<sup>3</sup> Section 504(b) of the RTKL requires agencies to post AORO contact information and related information online if the agency maintains a website.

4. **Specifically authorize OOR to establish reasonable hourly fees as they determine necessary for commercial and/or other exceedingly time-consuming requests as is done in other states (e.g., request(s) from an individual requester that requires over 5 to 10 hours to fulfill over a 30-day period).**

As stated above, I agree that a new fee schedule is appropriate for commercial requesters. I am ambivalent about allowing fees for non-commercial requests which require more than a certain amount of time to process. It's easy to see the agency side of that equation. However, we should not forget that in some (but certainly not all) cases the reason it takes so long to process a request is that the agency could have done a better job of organizing its records in the first place. I would recommend splitting these two ideas and pursuing a commercial requester fee schedule during the current legislative session, leaving the non-commercial issue for discussion at a future time when we have more data available to better analyze the need.

LBFC Recommendations for the OOR:

1. **Create a searchable database on their website for the contact information for all state and local government AOROs and update it as new contact information is provided by the agencies.**

As mentioned briefly above, the OOR – with the extremely capable assistance of the Legislative Data Processing Center – is in the process of creating a searchable AORO database which will be housed on our website and will be updated as new information is received. This should be available by June 2018.

2. **Develop training and informational materials to reach out to all AOROs (using the updated AORO contact list) to provide ongoing training on the RTKL.**

We will use the contact information in the AORO database to ensure that all registered AOROs are made aware of training opportunities, both online and on-site.

3. **Develop and post training videos and informational materials directed at requesters.**

Being able to provide online training will greatly enhance our ability to reach requesters. By their nature, requesters tend to be harder to reach as a group than agencies. We have provided training at various media companies across the state, but online training is clearly the best way to reach requesters.

**4. Annually collect data from AOROs on the number of RTKL requests received each year to monitor for any significant changes in trends.**

The OOR plans to start annual data collection in January 2019, looking back at the previous calendar year on an annual basis. Because both the OOR and LBFC have surveyed AOROs in the recent past, we currently do not plan to conduct such a survey this year.

Again, I want to compliment Executive Director Patricia Berger and all of the LBFC staff who worked on “Costs to Implement the Right-to-Know Law.” The information gathered and analyzed in the report is useful to the OOR, and I believe it will be useful as well to the General Assembly as amendments to the Right-to-Know Law are considered.

Please do not hesitate to get in touch if I or anyone else at the OOR can be of assistance on any RTKL-related matter.

Sincerely,  
Erik Arneson  
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