

Legislative Budget and Finance Committee

Costs to Implement the Right-to-Know Law Study

Report Presentation by Louis Day, at February 27, 2018, Meeting

Good morning. House Resolution 50 of 2017 directed the Legislative Budget and Finance Committee to conduct a comprehensive review of the fiscal impact on state and local government agencies for implementation of the Right-to-Know Law (RTKL). The review was to identify the annual costs to the state and local agencies for administration of the law and actions to decrease the administrative burdens of the law on those agencies, while ensuring reasonable public access to public records and information.

We found that most of Pennsylvania's state and local government agencies receive few RTKL requests, most of the requests received are easily fulfilled at a relatively low cost, and only a small percentage of the requests are appealed. However, a relatively small number of agencies do receive a large number of requests, often for a commercial purpose from outside of Pennsylvania, which could be exceedingly time-consuming. We surveyed nearly 1,100 state and local government agencies and found that more than three-quarters of the agencies received fewer than 25 RTKL requests during CY 2016, and incurred costs below \$2,500. However, 8 percent of the agencies reported incurring costs ranging from \$10,000 to over \$400,000, although only a third of the agencies were able to provide actual costs.

Based on our survey responses, we estimate that the total cost to state and local agencies to process RTKL requests during CY 2016 ranged from \$5.7 million to \$9.7 million. We also found that fewer than 3 percent of the RTKL requests received were appealed to the Office of Open Records (OOR) or the courts, and only 16 percent of the agencies surveyed reported having any requests appealed. Additionally, fewer than 4 percent of the agencies accounted for 80 percent of the total appeals reported. Unfortunately, few agencies were able to provide us with their estimated annual costs for responding to their RTKL appeals, and as a consequence, we were unable to estimate the annual costs incurred for appeals.

Since the RTKL went into effect, agencies have consistently reported an ongoing issue with a large number of exceedingly time-consuming RTKL requests that they consider overly burdensome, especially commercial, litigation, and inmate requests. However, there is little consensus among agencies on how time-consuming requests must be to be considered burdensome. For example, a third of the requests that our survey respondents considered burdensome were fulfilled in less than three hours, a third were fulfilled within three to eight hours, and the remaining third required eight hours or more. Although most agencies reported receiving commercial requests, often from out-of-state, and a third reported receiving requests related to litigation, few agencies reported receiving requests from inmates. There was also little variation in the amount of time spent responding to the different types of requests, with roughly two-thirds of all general, commercial, litigation, and research

requests and nearly all inmate requests being fulfilled in less than three hours. Therefore, whether a request is considered burdensome appears to be highly dependent on what the agency perceives to be burdensome, and may be more directly related with concerns about the type of request being made or who is making the request. We recommend that the General Assembly consider specifically authorizing the OOR to establish reasonable hourly fees as they determine necessary for commercial and other exceedingly time-consuming requests as is done in other states.

There are concerns, however, that some agencies may incur unnecessary costs because they fail to use processes that would reduce the time spent responding to RTKL requests and undergo legal costs by sending most of their requests to their solicitor for legal review or by responding to otherwise avoidable RTKL appeals. For example, many agencies have reported sending most, if not all, of their requests to their solicitor for review, which may be a key factor in the high costs some agencies have reported complying with the law. We also anonymously contacted 588 randomly selected state and local agencies to verbally request that they email us their annual budget, and about 60 percent of the agencies fulfilled our RTKL request by the statutory deadline. Most of the others never provided a response to our request. However, several other agencies refused to fulfill our request because we would not specify who we were calling for, why we wanted their budget, or what exactly we were looking for in their annual budget. Many of them were confrontational, and three agencies immediately terminated the call. Although we did not

appeal any of the denials, these findings support the claims that some agencies may undergo unnecessary legal costs responding to otherwise avoidable RTKL appeals.

Although the majority of the sampled agencies were aware of the requirements of the RTKL and responded to our RTKL request by the statutory deadline, we found that some of the agencies were unfamiliar with the law. The RTKL does not specifically require Agency Open Records Officers (AOROs) to participate in the OOR training sessions, however, the lack of training may result in inefficient responses to RTKL requests, unnecessary solicitor reviews, and otherwise avoidable appeals. We recommend that the General Assembly consider requiring all AOROs to annually attend one OOR RTKL training course, either on-site or online. We also recommend that the OOR develop electronic training and informational materials for both AOROs and requesters to provide ongoing training throughout the year.

During our review, we also found that 70 percent of the sampled agencies were not in full compliance with the statutory website posting requirements of the RTKL, with over half of those agencies not posting any of the required information. Although not required by law, we also found that less than half of the agencies had any of the RTKL information posted in an easily accessible location on their website, and only a quarter of the agencies provided complete AORO contact information. We recommend that the General Assembly consider requiring agencies to prominently post the required RTKL information on their websites and specifically

define AORO contact information to include the AORO's name, telephone number, email address, and physical address. We also found that the list of AOROs maintained by the OOR is outdated and incomplete. Therefore, we recommend that the General Assembly consider requiring agencies to provide complete AORO contact information to the OOR annually or whenever there is a change in the information. We also recommend that the OOR 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.

In closing, we thank the OOR Executive Director Erik Arneson and his staff, the numerous state and local government agencies and their representative associations, the various associations that advocate for government transparency and access to public records, and several individual RTKL requesters for their assistance and excellent cooperation during our study. Thank you.