



# Legislative Budget and Finance Committee

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

Offices: Room 400 Finance Building, 613 North Street, Harrisburg

Mailing Address: P.O. Box 8737, Harrisburg, PA 17105-8737

Tel: (717) 783-1600 • Fax: (717) 787-5487 • Web: <http://lbfc.legis.state.pa.us>

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## Costs to Implement the Right-to-Know Law

**Conducted Pursuant to House Resolution 2017-50**

February 2018

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## Summary

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House Resolution 2017-50 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. The review is to identify the annual costs to the state and local agencies for administration of the law and identify actions to decrease the administrative burdens of the law on the state and local agencies while ensuring reasonable public access to public records and information. See Appendix A for a copy of the resolution.

## Findings and Conclusions

The Right-to-Know Law (RTKL), Act 2008-3, replaced a prior law in an effort to strengthen and expand access to public records and create a process to make it easier for individuals to request and receive public records. As stated by the Pennsylvania Commonwealth Court, “the [RTKL] is remedial legislation designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions.” The law is applicable to state and local agencies, though its application to legislative records and judicial financial records is more limited in scope.<sup>1</sup>

Under the law, agency records are presumed to be public records, accessible for inspection and copying by anyone requesting them, and must be made available to a requester unless they fall within specific, enumerated exceptions or are privileged. In order to deny access to a requested record, the agency must prove by a preponderance of the evidence that an exception applies. Under the older law, the requester was required to prove that the record being sought was a public record.

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, some agencies, large and small, do receive a large number of RTKL requests, often for a commercial purpose from outside of Pennsylvania, which may be both voluminous and time-consuming.

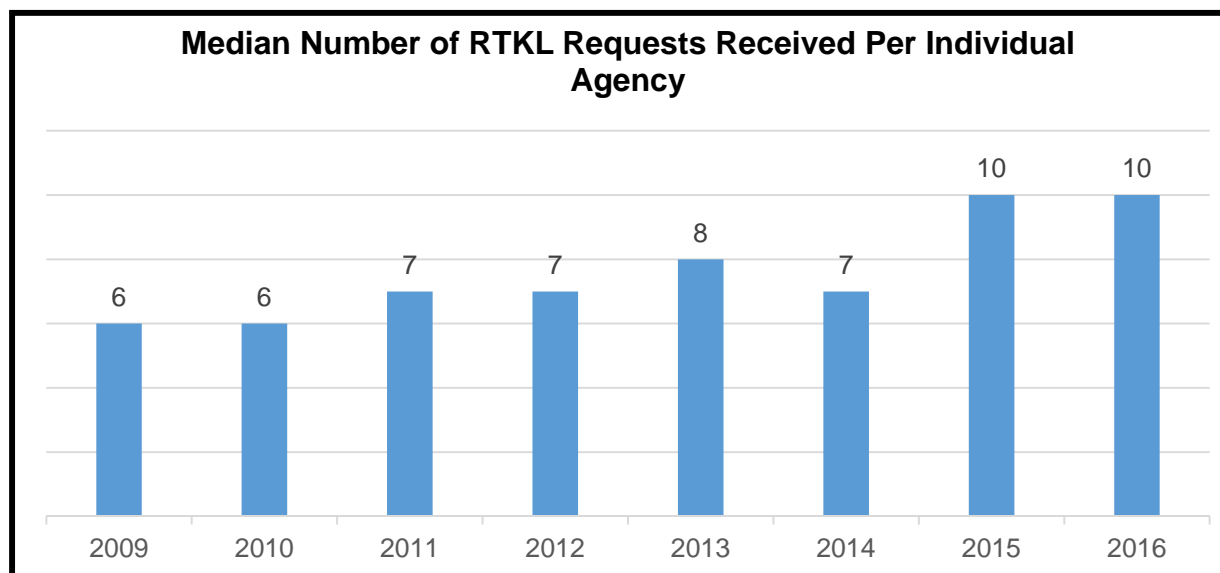
Specifically, we found the following:

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<sup>1</sup> The RTKL includes the judiciary as it pertains to access to financial records, as defined in the act, and the publication of judiciary contracts by the Treasury Department. The RTKL provides that a “judicial agency shall provide financial records in accordance with this act or any rule or order of court providing equal or greater access to the records.” The law further provides that a judicial agency may not deny a requester records due to the intended use of the record by the requester. In 2007, the PA Supreme Court promulgated Rule 509 establishing the process for access to judicial financial records. The Administrative Office of Pennsylvania Courts also posts case record and other information on its website.

**State and local agencies received an estimated 109,000 RTKL requests in 2016, though most agencies receive few requests.**

Since the RTKL went into effect on January 1, 2009, the overall number of RTKL requests received each year by Pennsylvania’s state and local government agencies have steadily increased, with a combined annual growth rate of almost 7 percent. Based on our survey of nearly 1,100 Agency Open Records Officers (AOROs) representing state and local agencies, we estimate that all agencies received a combined total of over 109,000 RTKL requests and fulfilled approximately 95,000 of those requests during CY 2016. The number of requests received, however, differs significantly among agencies, with over half of the agencies surveyed reporting that they received 10 or fewer RTKL requests during CY 2016. See the graph below.



**More than half of the agencies surveyed reported an annual cost below \$500, and we estimate the total cost to state and local agencies to respond to RTKL requests in 2016 ranged from \$5.7 million to \$9.7 million.**

Most of Pennsylvania’s state and local government agencies incurred costs responding to RTKL requests, and in response to our survey, 640 agencies reported a broad range in the costs incurred during CY 2016 (as shown below). Almost 54 percent of the agencies surveyed reported an annual cost of \$500 or less, 19 percent reported costs ranging from \$501 to \$2,000, 19 percent reported costs from \$2,001 to \$10,000, and 8 percent reported costs from \$10,001 to over \$400,000.

Although some of this wide range in costs may be explained by the difference in the number of RTKL requests each agency receives, we also found a broad range in the reported costs incurred per request. More than half of the agencies reported costs of \$50 or less per request. However, about 1 percent of the agencies reported costs of \$200 or more per request, including half of those agencies reporting costs

that ranged from \$1,000 to \$12,500 per request. This variation in costs may be explained by the amount of time spent fulfilling the RTKL requests and/or the hourly wage rate of the employee responding to the requests. Using the reported costs per request received for the middle 50 percent of the survey respondents, we calculated an average cost of \$61 per request.

<b>Agency Reported Annual Costs for CY 2016</b>			
<b>Agency Type</b>	<b>Respondents</b>	<b>Reported Annual Costs Responding to RTKL Requests</b>	
		<b>Highest</b>	<b>Median</b>
Legislative Agency .....	7	\$ 450	\$ 110
Judicial District .....	11	700	0
Conservation District ....	10	2,500	500
Police Department.....	6	4,000	750
Intermediate Unit.....	6	4,000	2,250
Public Charter School ..	15	5,000	450
City Government .....	6	13,750	3,650
Public Authority .....	21	14,250	80
PASSHE University.....	3	25,000	25,000
Borough Government...	145	32,000	200
Community College.....	3	46,040	10,000
Township Government .	278	73,560	220
County Government .....	12	150,000	8,000
Public School District ...	100	200,000	3,000
Philadelphia.....	1	297,000	N/A
Commonwealth Agency	16	406,000	2,500
<b>All Agencies.....</b>	<b>640</b>	<b>\$406,000</b>	<b>\$ 500</b>

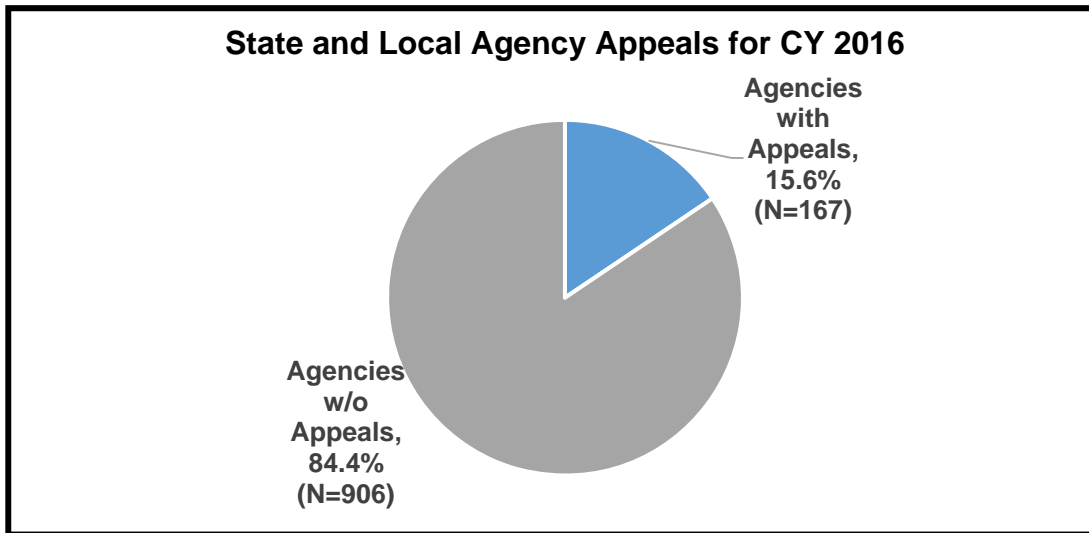
Using two separate calculations for comparison, we estimate that the total cost to state and local government agencies to respond to RTKL requests during CY 2016 was between \$5.7 million to \$9.7 million.

**Fewer than 3 percent of RTKL requests are appealed, with a relatively small number of agencies making up a significant portion of those appeals.**

Although agencies report incurring significant costs responding to RTKL appeals, we found that only a small percentage of agencies have RTKL requests appealed, and a relatively small number of those agencies make up a significant portion of the appeals.

After hitting a high of over 2,900 RTKL appeals to the PA Office of Open Records (OOR) during 2015, the number of appeals has begun to level off, with OOR officials speculating that the number will remain at approximately 2,500 per year over the next several years. Similarly, after hitting a high of 180 appeals to the courts during 2015, the number of appeals now appears to be leveling off at about 160 each year. This number may be low, however, due to the fact that OOR is not always informed when an appeal to the courts is taken.

The respondents to our survey reported that only 3 percent of the RTKL requests received by state and local government agencies in CY 2016 were appealed to the OOR and/or the courts, though there is substantial variation among agencies. We found that fewer than 16 percent of the agencies surveyed reported having any RTKL requests appealed during CY 2016 (see below). Moreover, a relatively small number of those agencies make up a significant portion of the total RTKL requests appealed. We were, however, unable to accurately estimate the annual costs incurred by agencies when responding to RTKL appeals due to the low number of respondents who provided their estimated annual costs for responding to RTKL appeals.



**Agencies differ on what they consider “overly burdensome” and may react more to the type of requester versus the actual request.**

Over the years, several agencies have provided extreme examples of RTKL requests they receive as a basis for needing relief from the requirements of the law. Most frequently, they report commercial requests, discovery/litigation requests, inmate requests, and repeated requests from the same individual requester as being the most time-consuming and disruptive. The RTKL, however, does not restrict these types of requests, and the courts have held that the volume of records alone does not equate to being disruptive or overly burdensome.

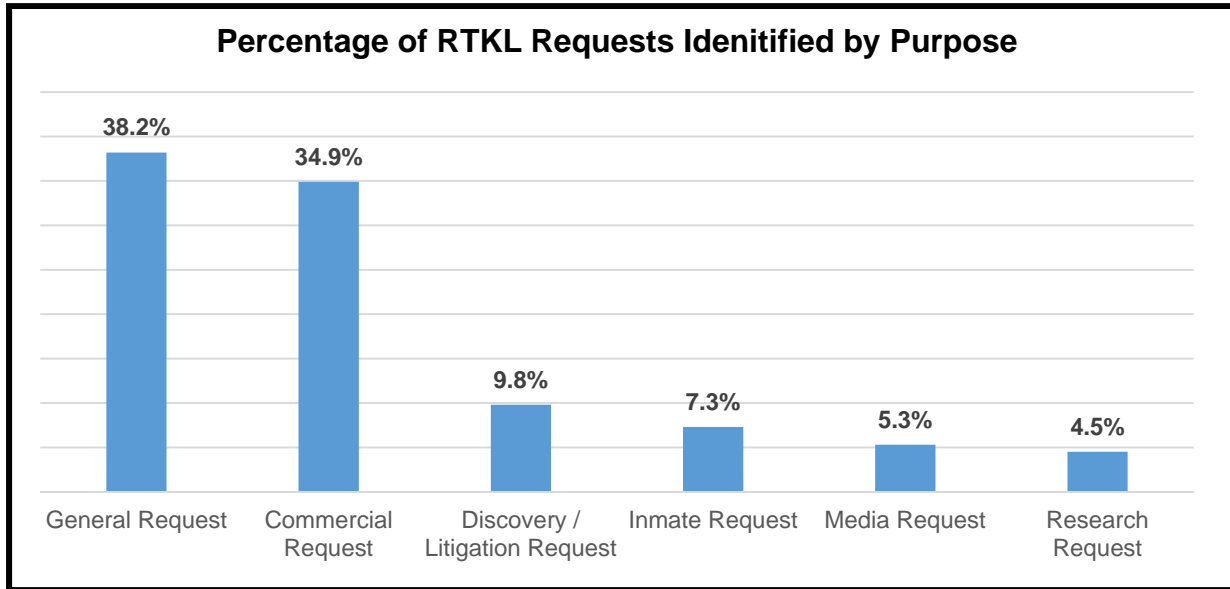
Based on our survey results, we found that there is little consensus among agencies on how time-consuming an RTKL request must be for it to be considered an overly burdensome request. Almost 33 percent of all the RTKL requests considered overly burdensome were fulfilled in less than three hours, another 33 percent took between three to eight hours, and over 34 percent required eight hours or more (see below). Therefore, the issue of burdensome requests appears to be highly dependent on what the agency perceives to be burdensome. This suggests that the issue is more directly related with concerns about the type of request being made or who is making the request.

Several states have attempted to address the burdensome nature of requests by authorizing fees to be charged for some of the staff time involved in fulfilling a request, sometimes specifying the types of requests for which fees may be charged. For example, Alaska allows an agency to charge personnel costs if the agency spends more than five hours fulfilling requests from the same requester over a 30-day period. Arizona only allows agencies to charge labor time for commercial requests. Several other states establish the maximum hourly rate and exclude the time spent locating, reviewing, and/or redacting the requested public records.

	<b>0-1 Hours</b>	<b>1-3 Hours</b>	<b>3-5 Hours</b>	<b>5-8 Hours</b>	<b>8-10 Hours</b>	<b>Over 10 Hours</b>
Police Department.....	0%	71%	23%	2%	0%	5%
Borough Government .....	22	12	36	8	10	12
City Government .....	2	22	43	13	2	17
Conservation District .....	0	52	13	13	0	22
Township Government .....	15	26	11	16	6	25
Public School District .....	11	20	18	12	12	28
County Government .....	2	2	36	14	1	46
Intermediate Unit .....	0	50	0	0	0	50
Public Authority .....	0	3	14	14	14	57
Public Charter School .....	0	3	15	3	15	65
Commonwealth Agency ...	0	8	4	12	0	77
Judicial District .....	0	0	0	0	0	100
<b>All Agencies .....</b>	<b>13%</b>	<b>20%</b>	<b>20%</b>	<b>13%</b>	<b>8%</b>	<b>27%</b>

**Most agencies report receiving commercial requests, often from out-of-state, and a third report receiving requests related to litigation. However, few agencies receive requests from incarcerated persons.**

Most of the RTKL requests received by our survey respondents were identified as being for a general purpose. However, as shown below, almost 35 percent of the RTKL requests were identified as being for a commercial purpose, with 69 percent of the agencies surveyed reporting that they received at least one request of this type. Moreover, nearly half of the commercial requests were reported as being made from outside of Pennsylvania. Almost 10 percent of the requests received were identified as being related to litigation against the agency, with 32 percent of the agencies surveyed receiving these types of requests. Although 7 percent of the reported RTKL requests received during CY 2016 were identified as being from incarcerated persons, only 6 percent of the agencies surveyed reported receiving requests from inmates, with the Department of Corrections receiving over half (52.3 percent) of all the inmate requests reported.



We also found little variation in the amount of time spent responding to the different types of requests, with roughly two-thirds of all general, commercial, discovery, and research requests being fulfilled in less than three hours, however, almost all inmate requests were reported as being fulfilled within that same time period. (See below.) According to OOR and DOC officials, most inmate requests are either easily fulfilled or denied and, therefore, 96 percent of all the inmate requests received by the DOC were processed in less than an hour.

### Average Time Spent Responding to Right-to-Know Law Requests by Request Type

	0-1 Hours	1-3 Hours	3-5 Hours	5-8 Hours	8-10 Hours	Over 10 Hours
General .....	48%	18%	13%	7%	3%	11%
Commercial .....	45	24	9	9	5	9
Discovery.....	39	25	9	6	7	14
Inmate .....	75	14	3	2	0	5
Research.....	43	26	13	6	5	8
Media.....	30	23	14	9	6	17
<b>All Requests....</b>	<b>47%</b>	<b>21%</b>	<b>11%</b>	<b>7%</b>	<b>4%</b>	<b>10%</b>

**About 30 percent of the agencies randomly selected have all of the requisite RTKL information accessible on their websites.**

If an agency maintains a website, the RTKL requires agencies to post the contact information for their AORO and the OOR or other applicable appeals officer; a form which may be used to file a request; and any regulations, policies, and procedures for the agency related to the RTKL. However, based on our review of 588 randomly selected state and local government agencies, we found that less than two-



thirds of the agencies had at least some of the required RTKL information posted, with only half of those agencies fully compliant. Although not required by law, we also found that less than half of the sampled agencies had any of the RTKL information posted in an easily accessible location on their website, and about a quarter of the agencies provided complete AORO contact information. There was significant variation in RTKL compliance depending on the type of agency. (See below.)

<b>Agencies in Compliance With Statutory Posting Requirements</b>				
	<b>Sample Size</b>	<b>Fully Compliant</b>	<b>Partially Compliant</b>	<b>No RTKL Info Posted</b>
Public Charter School .....	100	12%	28%	60%
Township Government .....	100	13	30	57
City Government .....	50	14	42	44
Borough Government .....	100	15	28	57
Legislative Agency .....	10	20	60	20
County Government .....	50	38	32	30
Public School District .....	100	50	42	8
Community College .....	14	64	36	0
PASSHE University .....	14	71	29	0
Commonwealth Agency ...	50	80	16	4
<b>All Agencies .....</b>	<b>588</b>	<b>30%</b>	<b>32%</b>	<b>38%</b>

**Almost 60 percent of the agencies randomly selected fulfilled our RTKL request by the statutory deadline.**

According to several frequent RTKL requesters and numerous associations that advocate for government transparency and access to public records, many agencies incur unnecessary costs because they fail to utilize technologies that would reduce the time spent responding to RTKL requests, they respond to simple requests in an inefficient and uncooperative manner, and undergo legal costs for unnecessary solicitor reviews and otherwise avoidable RTKL appeals.

We anonymously contacted 588 randomly selected state and local government agencies and requested an email copy of their FY 2016-17 annual budget. The majority of our RTKL requests were fulfilled by the statutory deadline. However, 41 percent of our requests were deemed denied, meaning the agency refused or never responded to our RTKL request, or fulfilled our request but exceeded the statutory deadline. There was, however, significant variation in the agency’s responsiveness dependent on the type of agency. As shown below, although 80 percent of the legislative agencies and county governments fulfilled our request by the statutory deadline, 64 percent of the requests made to PA State System of Higher Education (PASSHE) universities and 75 percent of the requests made to public charter schools were deemed denied. Of the 345 RTKL requests that were fulfilled by the statutory deadline, 68 percent accepted our informal verbal request, 43 percent directed us to their annual budget that was proactively posted on their website, and 70 percent of the agencies fulfilled our request within the same day.

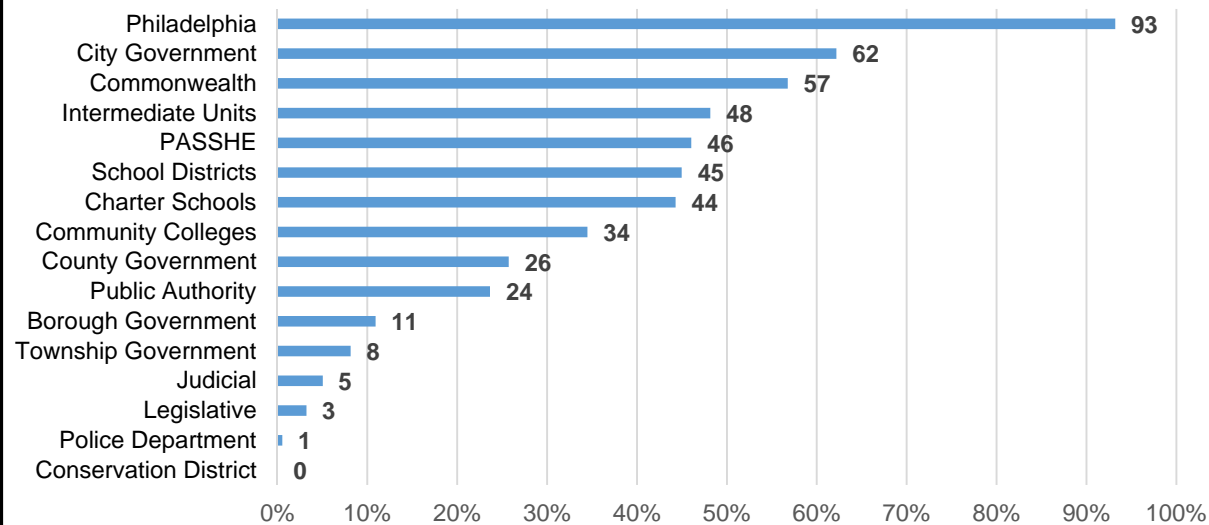
### Agency Response by Percentage: Fulfilled Versus Deemed Denied

	Agencies Called	Fulfilled by Statutory Deadline	Deemed Denied
Legislative Agency	10	80%	20%
County Government	50	80	20
Public School District	100	77	23
City Government	50	66	34
Commonwealth Agency	50	64	36
Borough Government	100	59	41
Township Government	100	59	41
Community College	14	50	50
PASSHE University	14	36	64
Public Charter School	100	25	75
<b>All Agencies</b>	<b>588</b>	<b>59%</b>	<b>41%</b>

**Some agencies frequently use 30-day extensions regardless of the type of requests being submitted, however, it appears to be a limited practice.**

Some agencies report automatically using 30-day extensions for most, if not all, of their RTKL requests, regardless of how time-consuming or voluminous a request may be. As a result, 30-day extensions are used frequently by some agencies regardless of the type of requests being submitted, though, this appears to be a limited practice. For example, only 3 of the 345 agencies that fulfilled our RTKL request used an extension.

### Percentage of RTKL Requests Fulfilled That Used a 30-Day Extension



## **Additional training is needed to improve the efficiency of the RTKL process and reduce the need for solicitor reviews and RTKL appeals.**

Although the majority of the agencies randomly selected 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 and/or their AOROs were unfamiliar with the requirements of the law. The RTKL does not specifically require AOROs to participate in the training sessions offered by the OOR. The lack of training may result in some agencies responding to RTKL requests in an inefficient manner, and may result in unnecessary solicitor reviews and otherwise avoidable appeals.

To date, the training courses provided by the OOR have been primarily through on-site presentations when requested to do so, but the OOR has indicated that the office has had difficulty meeting the demand. This also requires travel by both the OOR trainer and, to some extent, the attendees, and therefore it is likely that some agencies have not attended the training sessions due to time and staffing limitations. For this reason, the OOR will soon begin to use webinars and has started producing online videos as part of their training program. However, while administering our survey, we found that the list of AOROs maintained by the OOR is outdated and incomplete.

### **Recommendations:**

We recommend that the General Assembly consider amending the RTKL to:

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 current list maintained by the OOR is outdated and incomplete for a large number of agencies. SB 2017-465 would require this type of information be provided to the OOR.
2. **Require agencies to prominently post the 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.** Over half of the websites we reviewed did not post the required RTKL information in an easily accessible location, and less than a third provided complete contact information, making it difficult for potential requesters to access public documents.
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.** Increased training for AOROs may increase the efficiency of agencies' response to RTKL requests and reduce the need for solicitor reviews and RTKL appeals. Online training could be done at little or no additional cost to the attendees.

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 labor hours to fulfill over a 30-day period).** Although this would not necessarily cover all costs for agencies, it may offset the costs of more involved requests. The OOR could make exceptions for media and research requests. Additionally, a public agency could reduce or waive charges for personnel costs if it determines that the reduction or waiver is in the public interest. Reductions and waivers of charges should be uniformly applied among persons who are similarly situated. Fees could be appealed to the OOR if a requester has sufficient reason to believe that an agency is acting in bad faith. Current OOR draft regulations and SB 2017-465 propose fees for commercial requests. SB 2017-465 also makes fees appealable to the OOR.

We recommend that 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 noted above, the current list is out-of-date and is missing information for a large number of agencies.
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.** OOR should go forward with their plans to develop training and informational materials to reach out to AOROs on a regular basis after they relocate their office in early 2018.
3. **Develop and post training videos and informational materials directed at requesters.** Providing training and information to requesters may increase the efficiency of the RTKL process and reduce the number of RTKL appeals.
4. **Annually collect data from AOROs on the number of RTKL requests received each year to monitor for any significant changes in trends.** Currently, there is no ongoing compilation of this data on a statewide basis. The OOR conducted its first statewide survey of AOROs in February 2017.

# I. Introduction

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House Resolution 2017-50 directs 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. The resolution directs that a report be submitted to the House of Representatives within one year of the adoption of the resolution. See Appendix A for a copy of the resolution.

## Scope and Objectives Statement

1. Identify the annual costs associated with the administration of the Right-to-Know Law for commonwealth, judicial, and legislative agencies.
2. Identify the annual costs associated with the administration of the Right-to-Know Law for local agencies of various sizes and classification.
3. Identify actions to decrease the administrative burdens of the law on state and local agencies while ensuring reasonable public access to public records and information.
4. Make recommendations to amend the Right-to-Know Law to offset costs associated with the administration of the law for state and local agencies while ensuring reasonable public access to public records and information.

## Methodology

To understand the requirements of the Right-to-Know Law, Act 2008-3, we reviewed the law and met with the staff of the Office of Open Records (OOR) and reviewed court opinions. We reviewed testimony from Senate State Government Committee hearings held in 2011 and 2013 and House State Government Committee hearings held in 2013 and 2016 on proposed amendments to Act 2008-3.

To obtain the agency perspective on the requirements of the law, we met with officials of state and local government agencies and stakeholder groups representing county and local governments, school boards, and other parties. To obtain requester perspectives on the implementation of the law, we met with individual requesters, commercial requesters, and stakeholder groups representing individual requesters and media interests.

To determine costs to the agencies to implement Act 2008-3, we sent a survey to all Commonwealth agencies, the PA House of Representative, the PA Senate, legislative service agencies, the PA Courts of Common Pleas, county governments, local governments, public authorities, conservation districts, the universities that comprise the State System of Higher Education, and local education agencies, including public school districts, vocational and career institutes, intermediate units,

charter schools, and community colleges, requesting information specific to calendar year 2016. We also solicited information on the number and types of requests received, the time needed to respond to the requests, the number of appeals taken, and the number of staff involved in fulfilling the requests. To determine the trend in requests, we sent a second survey to these same agencies seeking the number of requests received in each year since 2009.

We did not audit the information provided on the number of requests received or the costs reported by the agencies. We did contact several of the respondents to clarify information they reported on their surveys.

To test the anecdotal information we received from requesters, we conducted a telephone survey requesting a public record from a random sample of agencies surveyed and reviewed each of those agencies' websites for compliance with Right-to-Know Law requirements.

## **Acknowledgements**

We thank Erik Arneson, Executive Director, Office of Open Records, and his staff for their assistance with our project. We also thank the individual requesters who shared their experiences with us, along with the PA Freedom of Information Coalition, the PA NewsMedia Association, and the Coalition for Sensible Public Records Access. We especially acknowledge the following associations for encouraging their members to respond to our surveys: the PA State Association of Township Supervisors; the PA School Boards Association; the PA State Association of Boroughs; and the County Commissioners' Association of PA. We also thank all the individual Agency Open Records Officers who responded to our surveys. Finally, we extend our appreciation to the individuals who, in addition to responding to our surveys, offered their comments and suggestions to us.

## **Important Note**

*This report was developed by Legislative Budget and Finance Committee staff. The release of this report should not be construed as an indication that the Committee or its individual members necessarily concur with the report's findings and recommendations.*

*Any questions or comments regarding the contents of this report should be directed to Patricia A. Berger, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania 17105-8737.*

## II. Overview of the Commonwealth’s Right-to-Know Law

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The Right-to-Know Law (RTKL), Act 2008-3, replaced a prior law in an effort to strengthen and expand access to public records and create a process to make it easier for individuals to request and receive public records. As stated by the Pennsylvania Commonwealth Court, “the [RTKL] is remedial legislation designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions.”<sup>1</sup> The law is applicable to state and local agencies, though its application to legislative records and judicial financial records is more limited in scope.<sup>2</sup>

Agency records, as defined by the RTKL, are presumed to be public records, accessible for inspection and copying by anyone requesting them, and must be made available to a requester unless they fall within specific, enumerated exceptions or are privileged.<sup>3</sup> See Exhibit 1. In order to deny access to a requested record, the agency must prove by a preponderance of the evidence that an exception applies. Under the older law, the requester was required to prove that the record being sought was a public record.

### Agency Responsibility Under the RTKL

Agencies are responsible for appointing an “agency open records officer (AORO)” who is to receive requests, direct requests to the appropriate person in the agency, track the agency’s progress, and issue interim and final responses. See Exhibit 2 for a flow chart of the process. Generally, an agency must respond to an RTKL request within five business days of the receipt of the request.<sup>4</sup> The response period begins when the request is received by the AORO.<sup>5</sup> Failure of the agency to respond within the given time frame(s) results in a deemed denial. See Exhibit 3 for more information on agencies’ response requirements.

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<sup>1</sup> *Bowling v. Office of Open Records*, 990 A.2d 813, 820, 823 (Pa. Cmwlth. 2010).

<sup>2</sup> The RTKL includes the judiciary as it pertains to access to financial records, as defined in the act, and the publication of judiciary contracts by the Treasury Department. The RTKL provides that a “judicial agency shall provide financial records in accordance with this act or any rule or order of court providing equal or greater access to the records.” The law further provides that a judicial agency may not deny a requester records due to the intended use of the record by the requester. In 2007, the PA Supreme Court promulgated Rule 509 establishing the process for access to judicial financial records. The Administrative Office of Pennsylvania Courts also posts case record and other information on its website.

<sup>3</sup> The RTKL does not apply to requests for police video and audio recordings. Access to an audio recording or video recording made by a law enforcement agency is addressed by Act 2017-22.

<sup>4</sup> An agency’s open records officer may determine that an extension of time is needed to respond if redaction of the record is required, if the record is in a remote location, if there are staffing limitations, if legal review is necessary, if the requester has not complied with the agency’s policies regarding access to its records, if the requester refuses to pay the applicable fees, or if the extent or nature of the request precludes a response within five business days.

<sup>5</sup> *Office of the Governor v. Donahue and OOR*, 98 A.3d 1223 (Pa. 2014).

**Public Records and Exceptions**

Agency	What Is Public Record	Exceptions (§708)
<p>“Commonwealth agency.”</p> <p>Any of the following:</p> <ul style="list-style-type: none"> <li>(1) Any office, department, authority, board, multistate agency or commission of the executive branch, an independent agency and a State-affiliated entity. The term includes: <ul style="list-style-type: none"> <li>(i) Governor’s Office.</li> <li>(ii) Attorney General</li> <li>Auditor General</li> <li>Treasury Department.</li> <li>(iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.</li> </ul> </li> <li>(2) The term does not include a judicial or legislative agency.</li> </ul>	<p>A record,<sup>a</sup> including a financial record,<sup>b</sup> of a Commonwealth or local agency that:</p> <ul style="list-style-type: none"> <li>(1) is not exempt under section 708;</li> <li>(2) is not exempt from being disclosed under any other federal or state law or regulation or judicial order or decree; or</li> <li>(3) is not protected by a privilege.</li> </ul>	<ul style="list-style-type: none"> <li>(1) Loss of funds or personal security.</li> <li>(2) Public safety.</li> <li>(3) Infrastructure security.</li> <li>(4) Computer security.</li> <li>(5) Health records.</li> <li>(6) Personal identification information and law enforcement/judicial security.</li> <li>(7) Personnel records.</li> <li>(8) Collective bargaining.<sup>c</sup></li> <li>(9) Drafts of bills, etc.</li> <li>(10) Internal, predecisional deliberations.</li> <li>(11) Trade secrets.</li> <li>(12) Notes and working papers.</li> <li>(13) Donations.</li> <li>(14) Unpublished academic material.</li> <li>(15) Academic transcripts and exams.</li> <li>(16) Criminal investigative records.</li> <li>(17) Noncriminal investigative records.</li> <li>(18) 911 records.<sup>d</sup></li> <li>(19) DNA and RNA records.</li> <li>(20) Autopsy records.</li> <li>(21) Draft minutes.</li> <li>(22) Audits/evaluations.</li> <li>(23) Library circulation records.</li> <li>(24) Certain archived material.</li> <li>(25) Sensitive geographical sites.</li> <li>(26) Pre-award bids</li> <li>(27) Insurance communications.</li> <li>(28) Social services.</li> <li>(29) Constituent letters.</li> <li>(30) Identity of minors.</li> </ul>
<p>“Independent agency.” Any board, commission or other agency or officer of the Commonwealth, that is not subject to the policy supervision and control of the Governor. The term does not include a legislative or judicial agency.</p>	<p>A record,<sup>e</sup> including a financial record,<sup>f</sup> of a Commonwealth or local agency that:</p> <ul style="list-style-type: none"> <li>(1) is not exempt under section 708;</li> <li>(2) is not exempt from being disclosed under any other federal or state law or regulation or judicial order or decree; or</li> <li>(3) is not protected by a privilege.</li> </ul>	



**Exhibit 1 (Continued)**

Agency	What Is Public Record	Exceptions (§708)
<p>“Judicial agency.” A court of the Commonwealth or any other entity or office of the unified judicial system.</p>	<p>Financial records, which include any account, voucher, or contract dealing with an agency’s disbursement of funds; an agency’s acquisition, use, or disposal of services, supplies, materials, equipment, or property; salary or other payments or expenses paid to an agency officer or employee; a financial audit report (does not include work papers underlying an audit).</p>	<p>See above for exceptions.</p>
<p>“Legislative agency.” Any of the following:</p> <ul style="list-style-type: none"> <li>(1) Senate,</li> <li>(2) House of Representatives,</li> <li>(3) Capitol Preservation Committee,</li> <li>(4) Center for Rural PA,</li> <li>(5) Joint Legislative Air &amp; Water Pollution Control &amp; Conservation Committee,</li> <li>(6) Joint State Government Commission,</li> <li>(7) Legislative Budget &amp; Finance Committee,</li> <li>(8) Legislative Data Processing Center,</li> <li>(9) Independent Regulatory Review Commission,</li> <li>(10) Legislative Reference Bureau,</li> <li>(11) Local Government Commission,</li> <li>(12) PA Commission on Sentencing,</li> <li>(13) Legislative Reapportionment Commission,</li> <li>(14) The Legislative Office for Research Liaison, and</li> <li>(15) The Legislative Audit Advisory Commission.</li> </ul>	<p>Any of the following for a legislative agency, standing committee, subcommittee, or conference committee of a legislative agency:</p> <ul style="list-style-type: none"> <li>(1) financial record;</li> <li>(2) bill or resolution;</li> <li>(3) fiscal notes;</li> <li>(4) co-sponsorship memoranda;</li> <li>(5) legislative journal;</li> <li>(6) meeting minutes, attendance records, and all recorded votes taken in a public committee meeting;</li> <li>(7) public hearing transcript;</li> <li>(8) executive nomination calendars;</li> <li>(9) House and Senate rules;</li> <li>(10) all recorded votes taken in a legislative session;</li> <li>(11) staff manuals or written policies;</li> <li>(12) Legislative Audit Advisory Commission audit report;</li> <li>(13) final or annual reports submitted to the General Assembly;</li> <li>(14) Legislative Budget and Finance Committee reports;</li> <li>(15) daily legislative session calendars and marked calendars;</li> <li>(16) a record communicating to an agency the official appointment of a legislative appointee;</li> <li>(17) the resignation of a legislative appointee;</li> <li>(18) proposed regulations, final-form regulations and final-omitted regulations; and</li> <li>(19) the results of public opinion surveys or similar efforts designed to measure public opinion funded by a legislative agency.</li> </ul>	<p>See above for exceptions.</p>

**Exhibit 1 (Continued)**

Agency	What Is Public Record	Exceptions (§708)
<p>"Local agency," includes:                      (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.                      (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.</p> <p>"State-affiliated entity." A Commonwealth authority or Commonwealth entity, includes: PHEAA and any entity established thereby: PGC&amp;B; PGC; PFBC; PHFA; PA Municipal Retirement Board; SSHE; community college; PTC; PUC; PennVEST; State Public School Building Authority; PIAA; PA Higher Educational Facilities Authority.</p> <p>"State-related institution." Includes: Temple University, University of Pittsburgh, Penn. State University, and Lincoln University.</p>	<p>A record,<sup>g</sup> including a financial record,<sup>h</sup> of a Commonwealth or local agency that:                      (1) is not exempt under section 708;                      (2) is not exempt from being disclosed under any other federal or state law or regulation or judicial order or decree; or (3) is not protected by a privilege.</p> <p>A record,<sup>i</sup> including a financial record,<sup>j</sup> of a Commonwealth or local agency that:                      (1) is not exempt under section 708;                      (2) is not exempt from being disclosed under any other federal or state law or regulation or judicial order or decree; or                      (3) is not protected by a privilege.</p>	<p>See above for exceptions.</p> <p>See above for exceptions.</p>

<sup>a</sup> Information, regardless of 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.

<sup>b</sup> Any account, voucher, or contract dealing with an agency's disbursement of funds; an agency's acquisition, use, or disposal of services, supplies, materials, equipment, or property; salary or other payments or expenses paid to an agency officer or employee; a financial audit report (does not include work papers underlying an audit).

<sup>c</sup> This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.

<sup>d</sup> It does 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.

<sup>e</sup> Information, regardless of 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.

<sup>f</sup> Any account, voucher, or contract dealing with an agency's disbursement of funds; an agency's acquisition, use, or disposal of services, supplies, materials, equipment, or property; salary or other payments or expenses paid to an agency officer or employee; a financial audit report (does not include work papers underlying an audit).

<sup>g</sup> Information, regardless of 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.

<sup>h</sup> Any account, voucher, or contract dealing with an agency's disbursement of funds; an agency's acquisition, use, or disposal of services, supplies, materials, equipment, or property; salary or other payments or expenses paid to an agency officer or employee; a financial audit report (does not include work papers underlying an audit).

<sup>i</sup> Information, regardless of 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.

<sup>j</sup> Any account, voucher, or contract dealing with an agency's disbursement of funds; an agency's acquisition, use, or disposal of services, supplies, materials, equipment, or property; salary or other payments or expenses paid to an agency officer or employee; a financial audit report (does not include work papers underlying an audit).

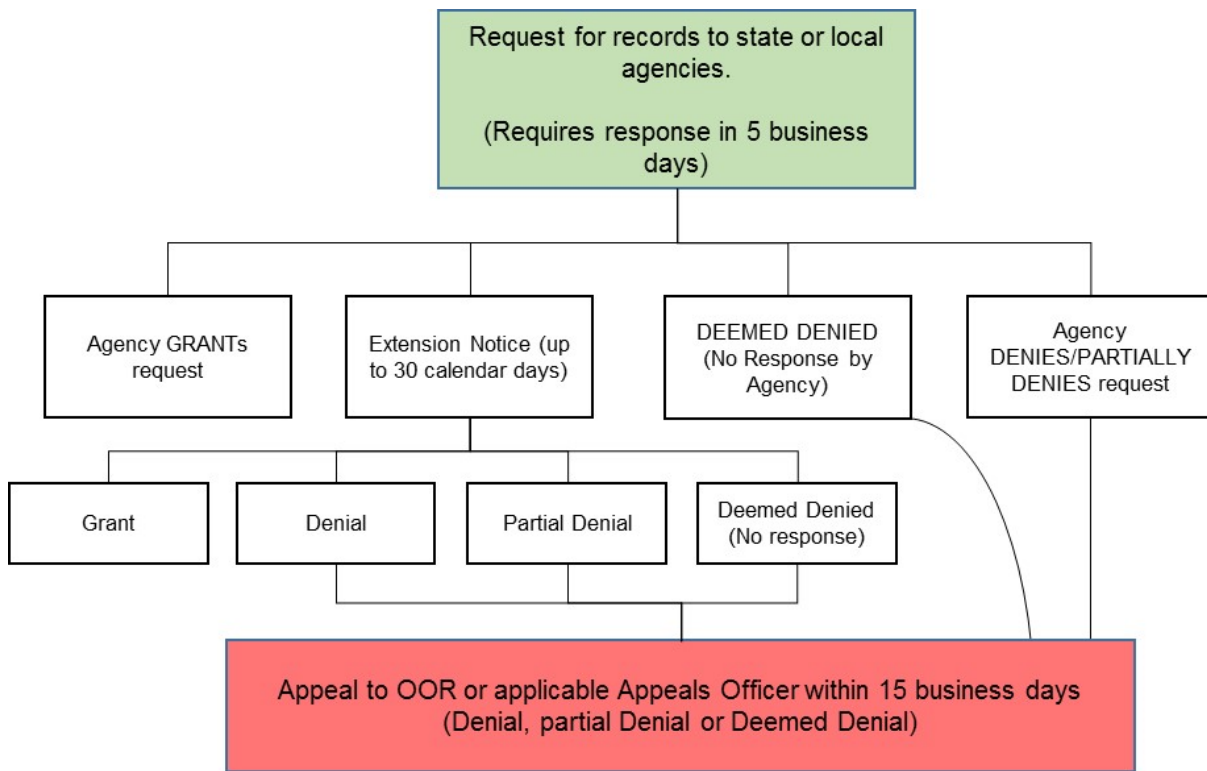
Source: LB&FC staff review of Right-to-Know Law.

Exhibit 2

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**Right to Know Request Process Up to Appeal**

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Source: Developed by LB&FC from material provided by the Office of Open Records.

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Each agency is also required to post the following:<sup>6</sup>

- contact information for the open records officer;
- contact information for the Office of Open Records or other applicable appeals officer;
- an RTKL request form which may be used to file a request; and
- regulations, policies and procedures of the agency relating to the RTKL.

All state and local agencies are required to also accept the uniform RTKL request form developed by the Office of Open Records (OOR) in addition to any request forms they may otherwise develop.<sup>7</sup> See Exhibit 4 for a copy of the OOR request form.

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<sup>6</sup> This information is required to be posted on the agency's website if the agency has a website. The law does not require the agency to have a website and we found that not all agencies have websites.

<sup>7</sup> Judicial and legislative agencies may develop their own forms or use the form developed by the OOR.

Exhibit 3

**Agency Response Requirements**

Agency	Time for Initial Agency Response	Extension	Appeal Procedure
Commonwealth agency <sup>a</sup>	Up to five business days from the date the written request is received by the open records officer.  If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.	An extension may be granted if one of seven conditions exist. Upon receipt of a written request for access, the open-records officer for an agency shall determine if one of the following applies: <sup>b</sup> (1) the request for access requires redaction of a record; (2) the request for access requires the retrieval of a record stored in a remote location; (3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations; (4) a legal review is necessary to determine whether the record is a record subject to access under this act; (5) the requester has not complied with the agency's policies regarding access to records; (6) the requester refuses to pay applicable fees authorized by this act; or (7) the extent or nature of the request precludes a response within the required time period.	Office of Open Records is to designate an appeals officer, except for the Attorney General, State Treasurer, and Auditor General shall each designate an appeals officer.  A requester may file an appeal within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial.  The appeals officer is required to make a final determination within 30 days. If the appeals officer fails to issue a determination within 30 days, the appeal is deemed denied. Further appeal is to Commonwealth Court.
Independent agency <sup>c</sup>	Same as for Commonwealth agency.	Same as for Commonwealth agency.	Office of Open Records is to designate an appeals officer.
Judicial agency <sup>d</sup>	Same as for Commonwealth agency.	Same as for Commonwealth agency.	Judicial agencies are to designate an appeals officer. Appeals are handled same as a Commonwealth agency.
Legislative agency <sup>e</sup>	Same as for Commonwealth agency.	Same as for Commonwealth agency.	The Legislative Reference Bureau shall designate an appeals officer, except that the Senate and House are to designate their own appeals officer. Appeals are handled same as a Commonwealth agency.

**Exhibit 3 (Continued)**

Agency	Time for Initial Agency Response	Extension	Appeal Procedure
Local agency <sup>f</sup>	Same as for Commonwealth agency.	Same as for Commonwealth agency.	Office of Open Records is to designate an appeals officer. District attorneys are to designate one or more appeals officers. Appeals are handled the same as a Commonwealth agency; except that appeals of a final determination are to be filed in the county court of common pleas.
State-affiliated entity <sup>g</sup>	Same as for Commonwealth agency.	Same as for Commonwealth agency.	Office of Open Records is to designate an appeals officer. Appeals are handled the same as a Commonwealth agency.

<sup>a</sup> Any of the following: (1) Any office, department, authority, board, multistate agency or commission of the executive branch, an independent agency and a State-affiliated entity. The term includes: (i) Governor's Office. (ii) Attorney General, Auditor General, Treasury Department. (iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function. (2) The term does not include a judicial or legislative agency.

<sup>b</sup> (b) Notice.--(1) Upon a determination that one of the factors listed applies, the open-records officer shall send written notice to the requester within five business days of receipt of the request for access. (2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice. (3) If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

<sup>c</sup> Any board, commission or other agency or officer of the Commonwealth, that is not subject to the policy supervision and control of the Governor. The term does not include a legislative or judicial agency.

<sup>d</sup> A court of the Commonwealth or any other entity or office of the unified judicial system.

<sup>e</sup> Any of the following: (1) Senate. (2) House of Representatives. (3) Cap. Preservation Comm. (4) Center for Rural PA. (5) JLawPCCC. (6) JSGC. (7) LB&FC. (8) LDPC. (9) IRR. (10) LRB. (11) LGC. (12) PA Comm. on Sentencing. (13) Leg. Reapportionment Commission. (14) The Legislative Office for Research Liaison. (15) The Legislative Audit Advisory Commission.

<sup>f</sup> Includes: (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school. (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

<sup>g</sup> A Commonwealth authority or Commonwealth entity, includes: PHEAA and any entity established thereby: PGC; PFC; PHFA; PA Municipal Retirement Board; SSHE; community college; PTC; PUC; PennVEST; State Public School Building Authority; PIAA; PA Higher Educational Facilities Authority.

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Office of Open Records Request 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

**\*\* PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES \*\***  
**\*\* IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL \*\***

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***FOR AGENCY USE ONLY***

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

*\*\*Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

Agencies are required to provide the public record in the medium requested if it exists in that medium. Otherwise the agency must provide it in the medium in which it exists. Additionally, the agency is not required to create a record that does not exist at the time of the request, or to compile, maintain, format, or organize a record in a manner in which the agency does not currently compile, maintain, format, or organize the record. A written request is required in order to pursue relief and remedies provided by the law. An agency may, however, fulfill verbal, written, or anonymous verbal or written requests under the act, although the agency may establish policies that require the name of the requester. Therefore, although the RTKL provides a formal process for providing access to public records, it does not restrict access by less formal means.

In addition to responding to requests under the RTKL, Commonwealth, legislative, and judicial agencies are required to file a copy of any contract for \$5,000 or more with the Treasury Department within ten days of the contract being fully executed by the agency. The Department is required to post this information on their website and retain it for at least four years after the completion date of the contract. The individual agency is responsible for its accuracy and for redacting the documents in accordance with the RTKL.

## **Office of Open Records**

The law created the Office of Open Records (OOR), administratively housed within the Department of Community and Economic Development, headed by an executive director who is appointed by the Governor for a six-year term. The Office has 17 staff, including 10 attorneys serving as hearing officers, with a budget of \$2.915 million in FY 2017-18. The OOR is to:

- provide information relating to the implementation and enforcement of the RTKL;
- issue advisory opinions to agencies and requesters;
- provide training courses to agencies and public officials;
- provide annual, regional training courses to local agencies, public officials, and public employees;
- assign appeals officers to review the challenge of denials of requests from Commonwealth and local agencies (See Chapter V for further information about the appeals process);<sup>8</sup>
- establish an informal mediation program to resolve disputes under the RTKL;

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<sup>8</sup> Judicial agencies, legislative agencies, the Attorney General, State Treasurer, and Auditor General (all Commonwealth agencies), and the district attorneys of each county (all local agencies), designate their own appeals officers to hear appeals from the respective agency's determinations.

- establish a website with information on the RTKL including fees, advisory opinions and decisions, and the name and address of all open records officers in the Commonwealth; and
- conduct a biannual review of fees charged under the RTKL

**Fees.** The OOR is authorized by the act to establish fees for duplication of records<sup>9</sup> for Commonwealth and local agencies. Judicial and legislative agencies are authorized to establish their own fees. All fees, however, must be “reasonable and based on prevailing fees for comparable duplication services provided by local business entities.” Fees may also be charged for postage (not to exceed the actual cost), document certification, conversion to paper from an electronic or other non-paper media and enhanced electronic access. See Exhibit 5 for the fees set by the OOR. Fees may not be charged to redact confidential data from otherwise public documents or for agency staff time needed to retrieve, review, and forward a public document to the requester.

The OOR conducts fee reviews every two years to determine the appropriateness of the established fees. In its 2016 review, the OOR reviewed appellate court decisions and its own final determinations released since its last review that addressed fees, and conducted a comparative analysis of fees assessed by judicial and legislative agencies, a random sample of county prothonotary’s offices, and independent Commonwealth agencies. The review also included a random sampling of local businesses that provide duplication services, paper as well as CDs, DVDs, and thumb/flash drives, across the Commonwealth. This review found that the current fees were generally reasonable and recommended an increase to \$0.50 per page for color copies, and a charge of the actual costs up to \$3.00 for CD and DVD copies.

## Value of the RTKL

The purpose of the RTKL was to provide the opportunity for the public to be able to more easily hold their government accountable to them. The RTKL has assisted members of the media and the public to access the following:

- records regarding the payment of legal fees to defend an agency and agency employees in lawsuits;
- training records for a police officer charged (and later acquitted) in a fatal shooting;
- records related to the use of taxpayer monies for salaries, building projects, travel, etc.;

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<sup>9</sup> This includes duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means.



- the evaluation form and criteria used by a school board to evaluate the school district superintendent; and
- agency contracts.

Somewhat surprisingly, the RTKL has also reportedly been used by public officials to access records they seek in order to perform their public duties.

Exhibit 5

**OOB RTKL Fee Structure\***

<u>Record Type/Delivery Method</u>	<u>Fee</u>
Black & White (B&W) Copies.....	Up to \$0.25 per copy. <sup>a</sup>
Color Copies.....	Up to \$0.35 per copy. <sup>b</sup>
Specialized Documents <sup>c</sup> .....	Up to actual cost.
Records Delivered via Email .....	No additional fee may be imposed. <sup>d</sup>
CD/DVD.....	Up to actual cost, not to exceed \$3.00 per disc.
Flash Drive .....	Up to actual cost.
Facsimile .....	Up to actual cost. <sup>e</sup>
Other Media.....	Up to actual cost.
Redaction .....	No additional fee may be imposed. <sup>f</sup>
Conversion to Paper .....	Up to \$0.25 per page. <sup>g</sup>
Photographing a Record .....	No additional fee may be imposed. <sup>h</sup>
Postage .....	Up to actual cost of USPS first-class postage.
Certification .....	Up to \$5.00 per record. <sup>i</sup>

\* The OOR adopted this Official RTKL Fee Structure on Sept. 15, 2016.

<sup>a</sup> A “copy” is either a single-sided copy on 8.5”x11” paper, or one side of a double-sided copy on 8.5”x11” paper.

<sup>b</sup> A “copy” is either a single-sided copy on 8.5”x11” paper, or one side of a double-sided copy on 8.5”x11” paper.

Note that a requester may ask for black and white copies even if the original is in color and color copies are available.

<sup>c</sup> Including, but not necessarily limited to, non-standard sized documents and blueprints.

<sup>d</sup> If a requester asks to receive records which require redactions in electronic format, an agency may print the records to provide for secure redaction, then scan them in for delivery by email. Accordingly, the agency may charge the fees noted above for either B&W or color copies, as appropriate.

<sup>e</sup> If an agency must print records to send them by facsimile, the agency may charge the fees noted above for B&W copies.

<sup>f</sup> If a requester seeks records requiring redaction, an agency may copy or print the records to provide for secure redaction. Accordingly, the agency may charge the fees noted above for either B&W or color copies, as appropriate.

<sup>g</sup> If a record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media, unless the requester specifically requests for the record to be duplicated in the more expensive medium.

<sup>h</sup> This assumes the requester is using his or her own camera, such as a cellphone camera, to photograph the records. If redaction is required prior to the requester being granted access to photograph records, an agency may copy or print the records to provide for secure redaction. Accordingly, the agency may charge the fees noted above for either B&W or color copies, as appropriate.

<sup>i</sup> Under the RTKL, an agency may impose “reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.” The OOR recommends no more than \$5 per record to certify a public record. Certification fees do not include notarization fees.

Source: PA Office of Open Records.

### III. The Number of Right-to-Know Law Requests Received Differs Significantly Among Agencies

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**Overview:** Since the Pennsylvania Right-to-Know Law (Act 2008-3) went into effect on January 1, 2009, the overall number of Right-to-Know Law (RTKL) requests received each year by Pennsylvania state and local government agencies has steadily increased with a combined annual growth rate of almost 7 percent. Based on our survey responses from nearly 1,100 Agency Open Records Officers (AOROs) representing state and local agencies, we estimate that all agencies received a combined total of over 109,000 RTKL requests and fulfilled approximately 95,000 of those requests during CY 2016. The number of requests received, however, differs significantly among agencies. Over half of the agencies surveyed reported receiving 10 or fewer RTKL requests, 36 percent reported receiving between 11 to 50 requests, 6 percent reported 51 to 100 requests, and the remaining 6 percent reported over 100 requests during CY 2016.

#### ***Scope and Methodology.***

We distributed two separate surveys to approximately 2,800 AOROs for Pennsylvania's state and local government agencies to identify the number and type of RTKL requests they receive and how much it costs them to respond to those requests. One of the surveys was very brief and only sought to measure the historical trend for the number of RTKL requests received each calendar year (CY) from 2009 to 2016. Our historical trend survey received an overall response from 1,143 agencies, in which 615 submitted completed surveys, providing a 22 percent response rate. The other survey was an extensive questionnaire that sought detailed information on the RTKL specific to CY 2016. Our CY 2016 specific survey received an overall response from 1,093 agencies, though, some agencies did not provide responses to all of the questions in the survey. While the overall response rate for our CY 2016 specific survey was 39 percent, the response rate varies for certain questions.

To facilitate analysis and reporting of survey results, we grouped agencies into the following types: Commonwealth Agency, Legislative Agency, Judicial District, PASSHE University, Community College, County Government, City Government, Township Government, Borough Government, Police Department, Public Authority, Conservation District, Public School District, Public Charter School, Intermediate Unit, and Philadelphia.<sup>1</sup>

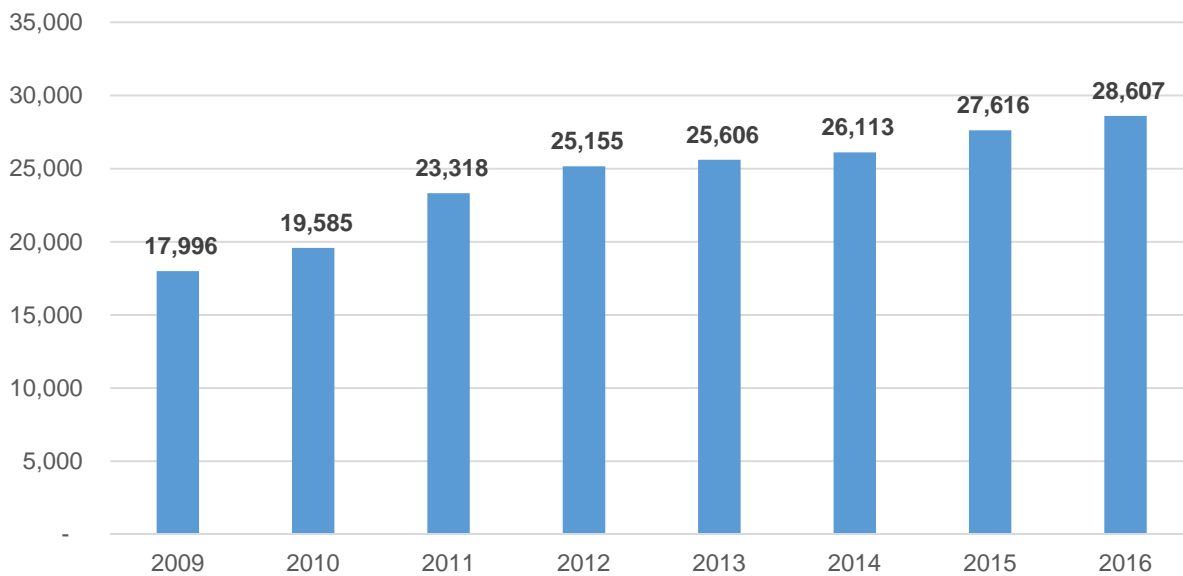
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<sup>1</sup> Philadelphia was not included with the city or county government categories because of the substantial difference in the population and number of RTKL requests received.

**The Historical Trend of Right-to-Know Law Requests Received.** The overall number of RTKL requests received each year by Pennsylvania state and local government agencies has steadily increased since 2009 with a combined annual growth rate of almost 7 percent. See Exhibit 6 and Table 1. During this time period, the median number of RTKL requests received by an individual agency for all types of agencies increased from 6 to 10 requests per year. Moreover, several agencies and their representative associations have reported that the number of requests received during CY 2017 is on track to increase even further. Still, the increase in the number of RTKL requests varies significantly dependent on the type of agency. Although the community colleges and intermediate units surveyed received fewer RTKL requests in 2016 than 2009, all other agency types reported overall growth, with public authorities and legislative agencies experiencing the greatest increase by percentage.

Exhibit 6

**Historical Trend of Total RTKL Requests Received Each Calendar Year\***



\* As identified by 615 respondents to our historical trend survey.

Source: Developed by LB&FC from our historical trend survey.

Table 1

**Comparison: RTKL Requests Received by Agency Type (CY 2009 to 2016)\***

Agency Type	Respondents	Requests Received by Agency Type		2009-2016 Difference	Annual Growth Rate
		2009	2016		
Community College.....	2	60	47	-22%	-3.4%
Intermediate Unit.....	11	57	55	-4	-0.5
Conservation District....	8	122	127	4	0.6
Public Charter School ..	14	28	35	25	3.2
PASSHE University.....	9	199	253	27	3.5
Township Government .	216	6,747	8,832	31	3.9
Public School District ...	136	1,821	2,798	54	6.3
County Government.....	22	2,650	4,158	57	6.6
Borough Government...	119	1,214	2,270	87	9.4
Commonwealth Agency	28	4,408	8,304	88	9.5
Police Department.....	9	264	498	89	9.5
Judicial District .....	10	28	69	146	13.8
City Government .....	7	353	982	178	15.7
Legislative Agency .....	7	27	97	259	20.0
Public Authority .....	17	18	82	356	24.2
<b>Total .....</b>	<b>615</b>	<b>17,996</b>	<b>28,607</b>	<b>59%</b>	<b>6.8%</b>

\* Philadelphia did not provide a response to our historical trend survey.

Source: Developed by LB&FC from our historical trend survey.

**Reported Number of Right-to-Know Law Requests Received During Calendar Year 2016.** Most Pennsylvania state and local government agencies receive RTKL requests, with 95 percent of agencies surveyed reporting that they received at least one request during CY 2016. According to the 1,093 respondents to our CY 2016 specific survey, their agencies received a combined total of 38,152 RTKL requests.<sup>2</sup> The number of RTKL requests received, however, varies substantially per individual agency. Over half of the agencies surveyed reported receiving 10 or fewer RTKL requests<sup>3</sup>, 36 percent reported receiving between 11 to 50 requests, 6 percent reported 51 to 100 requests, and the remaining 6 percent reported over 100 requests during CY 2016. Table 2 illustrates the range in the number of RTKL requests received by agencies. For most agency types, the average (Mean) is much higher than the median because a few agencies receive far more RTKL requests than most, therefore, the average is positively skewed.

<sup>2</sup> Only 36 percent of survey respondents were able to provide the exact number of RTKL requests received, with the remaining 64 percent providing estimates.

<sup>3</sup> These findings are comparable to the results of the OOR survey on the RTKL conducted in February 2017.

Table 2

**RTKL Requests Received During CY 2016**

Agency Type	Respondents	Requests Received by Agency Type	Requests Received by Individual Agency		
		Total	Maximum	Average	Median
Public Charter School ....	22	71	10	3	3
Public Authority .....	25	137	50	5	2
Intermediate Unit.....	9	57	19	6	5
Conservation District .....	12	108	36	9	5
Judicial District .....	19	171	75	9	2
Legislative Agency .....	11	127	87	12	2
Public School District .....	180	2,981	239	17	12
Borough Government.....	249	4,741	373	19	8
Community College.....	4	77	28	19	22
PASSHE University.....	10	240	57	24	22
Township Government <sup>a</sup> ..	444	10,763	892	24	10
City Government .....	10	1,146	560	115	58
County Government .....	27	3,391	715	126	60
Police Department <sup>b</sup> .....	19	2,763	1,845	145	23
Commonwealth Agency .	51	9,545	1,992	187	43
Philadelphia.....	1	1,834	N/A	N/A	N/A
<b>All Agencies.....</b>	<b>1,093</b>	<b>38,152</b>	<b>1,992</b>	<b>35</b>	<b>10</b>

<sup>a</sup> A single township reported receiving a total of 2,829 RTKL requests during CY 2016, in which 2,573 of those requests were for police incident reports. Warminster Township did not respond to the LB&FC CY 2016 specific survey.

<sup>b</sup> A single police department reported receiving a total of 1,845 RTKL requests, in which 80-90 percent of the requests reported were requests for police incident reports.

Source: Developed by LB&FC from our CY 2016 specific survey.

***Estimated Number of Right-to-Know Law Requests Received and Fulfilled.***

With approximately 3,844 AOROs for over 6,000 state and local government agencies across Pennsylvania, we estimate that all state and local government agencies received a combined total of almost 109,000 RTKL requests during CY 2016.<sup>4</sup> However, not all of the RTKL requests were fulfilled. Reportedly, almost 16 percent of the RTKL requests received by our survey respondents were fully denied, though the percentage varies significantly among agencies. Although agencies do spend time reviewing RTKL requests before denial, most of the time spent and costs incurred are for the requests that are partially and/or fully granted. As such, we estimate that the total number of RTKL requests fulfilled by all state and local government agencies in Pennsylvania was approximately 95,000 requests.

<sup>4</sup> Many AOROs respond to RTKL requests for multiple agency types within their municipalities and, therefore, there are fewer AOROs than agencies. However, the AORO list compiled by OOR may not include all of the AOROs in Pennsylvania.

## IV. Agency Responsiveness and the Resulting Costs Vary Significantly by Type of Agency

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**Overview:** Most of Pennsylvania’s state and local government agencies have incurred costs responding to Right-to-Know Law (RTKL) requests, though there is a broad range in the reported costs for different agencies. Almost 54 percent of the agencies surveyed reported an annual cost of \$500 or less, 19 percent reported costs ranging from \$501 to \$2,000, 19 percent reported costs from \$2,001 to \$10,000, and 8 percent reported costs from \$10,001 to over \$400,000. Although, some of this wide range in costs may be explained by the difference in the number of RTKL requests each agency receives, we also found a broad range in the average costs incurred per request. More than half of the agencies surveyed reported costs of \$50 or less per request. However, about 1 percent of the agencies reported costs of \$200 or more per request, including half of those agencies reporting costs that ranged from \$1,000 to \$12,500 per request.

Using two separate calculations for comparison, we estimate that the total cost to state and local government agencies to respond to RTKL requests during CY 2016 ranged between \$5.7 million to \$9.7 million.

### Scope and Methodology

We asked the survey respondents to our CY 2016 specific survey what their estimated annual costs were for responding to the RTKL requests they received during CY 2016. Only 640 of the 1,093 total survey respondents were able to report an annual cost (a 23 percent response rate). However, few agencies tracked the actual costs incurred responding to RTKL requests, with most of the respondents only able to provide rough estimates of their costs. There was also a significant number of outliers in the data. Therefore, we averaged the middle 50 percent of the reported costs incurred to more accurately calculate the total annual costs for all Pennsylvania state and local government agencies.

Due to the low survey response rate for the reported annual costs incurred, and our concerns with the reliability of the data, we performed a second calculation for comparison. In our CY 2016 specific survey, we asked the agencies: how many RTKL requests did they receive during CY 2016; how much time was spent responding to those requests; and what was the hourly wage rate of their lowest-paid employee capable of searching, retrieving, reviewing, and providing for redaction of RTKL requests. Using their responses, we were able to calculate an annual range for the total cost of wages incurred responding to RTKL requests.

## A. The Reported Costs Incurred Responding to Right-to-Know Law Requests

Agencies report that responding to RTKL requests requires a significant amount of time and, as a result, has placed a financial burden on them. Although the RTKL permits an agency to charge copying and postage fees when responding to an RTKL request,<sup>1</sup> the law does not permit an agency to charge for the staff time spent searching, retrieving, reviewing, and providing for redaction of a request, or the legal costs incurred when an agency has a solicitor review a request.<sup>2</sup> As a result, most Pennsylvania government agencies have incurred at least some costs responding to RTKL requests, though there is a broad range in the reported costs for different agencies.

***Findings in a 2012 Report from the Pennsylvania Local Government Commission.*** On October 9, 2012, the Pennsylvania Local Government Commission (LGC) published a report on the statutory mandates placed on counties and municipalities.<sup>3</sup> As part of their study, the representative associations for Pennsylvania's counties and municipalities developed a list of their "20 or so most burdensome mandates." The PA State Association of Boroughs (PSAB), the PA State Association of Township Commissioners (PSATC), and the PA State Association of Township Supervisors (PSATS) all identified RTKL compliance as one of their most financially burdensome mandates, though the County Commissioners Association of Pennsylvania (CCAP) and the Pennsylvania Municipal League (PML) did not.

In further analysis, the LGC formulated and conducted a survey of all Pennsylvania counties, cities, boroughs, and first and second class townships. The survey questions included rating the mandates from not burdensome to very burdensome, and sought estimates for the costs incurred implementing each individual mandate during FY 2011-12. The 2,562 municipalities surveyed generated a 30 percent overall completion rate, though only 71 cities, boroughs, and first-class townships, and 233 second-class townships provided a cost for complying with the RTKL. The median cost was chosen as an indicator by LGC given the number of responses, the wide range of reported costs, and a large standard deviation.

The LGC report found that, despite being considered burdensome, the median cost for RTKL compliance was relatively low. The 71 cities, boroughs, and first-class townships reported an annual median cost of \$1,000, and the 233 second-

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<sup>1</sup> Eighty-two percent of the respondents to our CY 2016 specific survey reported that the current copying and postage fee structure adequately covers their actual printing and postages costs. However, a significant number of the remaining 19 percent made comments that suggested they misunderstood the question and answered no because the fees do not cover their labor costs.

<sup>2</sup> Although we did not review the fee schedules posted on agency websites, we discovered three separate public school districts that cited a \$20 per hour fee for the redaction of a request for public records.

<sup>3</sup> Local Government Commission. 2012. Senate Resolution 323 of 2010, Study of Statutory mandates Placed on Counties and Municipalities (Harrisburg: General Assembly of the Commonwealth of Pennsylvania).

class townships reported a median cost of \$200. As such, the LGC concluded that RTKL compliance may be considered burdensome due to

indirect costs, nonmonetary costs, and ‘hassle level’ to implement the mandate (e.g., time displacement effects, inefficient procedures, attitudinal-paradigms). For example, pilot study findings indicated that for ‘Right-to-Know Law Compliance,’ municipalities experienced competitors using the law to undercut vendors and frivolous requests, which likely contribute to time displacement effects and attitudinal paradigms.

The number of RTKL requests received by Pennsylvania’s state and local government, however, has continued to increase since FY 2011-12 and, therefore, so have their costs. As such, we conducted a survey to calculate the total costs incurred in responding to all RTKL requests received by state and local agencies during CY 2016 and, for comparison, a separate cost analysis that estimates a range in the annual costs per agency type.

***The Reported Costs Incurred Per Individual Agency.*** In response to our CY 2016 specific survey, 640 agencies reported a broad range in their annual costs for responding to RTKL requests, with 54 percent of the agencies reporting an annual cost of \$500 or less, 19 percent reporting costs ranging from \$501 to \$2,000, 19 percent ranging from \$2,001 to \$10,000, and 8 percent from \$10,001 to over \$400,000.<sup>4</sup> Since the average reported costs would be significantly affected by the relatively small number of agencies that reported very high costs, we calculated the annual median costs reported by each agency type, resulting in an annual median cost of \$500 for all of the state and local government agencies surveyed. See Table 3.

The broad range in reported costs and our calculated annual median cost is relatively comparable with the findings in the 2012 LGC report. Some of the wide-ranging costs may be explained by the difference in the number of RTKL requests each agency receives, however, we also found a broad range in the reported costs incurred per request.

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<sup>4</sup> The reported costs include the staff time spent searching, retrieving, reviewing, and providing for redaction of RTKL requests, and any legal costs incurred when an agency has a solicitor review a request. The reported costs does not include the cost of employee benefits or the legal costs incurred responding to RTKL appeals.



Table 3

**Reported Annual Costs During CY 2016 by Agency Type\***

Agency Type	Respondents	Reported Annual Costs Responding to RTKL Requests	
		Highest	Median
Legislative Agency .....	7	\$ 450	\$ 110
Judicial District .....	11	700	0
Conservation District ....	10	2,500	500
Police Department.....	6	4,000	750
Intermediate Unit.....	6	4,000	2,250
Public Charter School ..	15	5,000	450
City Government <sup>a</sup> .....	6	13,750	3,650
Public Authority .....	21	14,250	80
PASSHE University .....	3	25,000	25,000
Borough Government...	145	32,000	200
Community College .....	3	46,040	10,000
Township Government .	278	73,560	220
County Government <sup>b</sup> ....	12	150,000	8,000
Public School District ...	100	200,000	3,000
Philadelphia.....	1	297,000	N/A
Commonwealth Agency	16	406,000	2,500
<b>All Agencies.....</b>	<b>640</b>	<b>\$406,000</b>	<b>\$ 500</b>

\* The reported costs include the staff time spent searching, retrieving, reviewing, and providing for redaction of RTKL requests, and any legal costs incurred when an agency has a solicitor review a request. The reported costs does not include the cost of employee benefits or the legal costs incurred responding to RTKL appeals.

<sup>a</sup> City Government does not include the City of Philadelphia.

<sup>b</sup> County Government does not include the County of Philadelphia.

Source: Developed by LB&FC from our CY 2016 specific survey.

**The Reported Costs Incurred Per RTKL Request.** We also calculated the reported costs incurred per RTKL request received by each individual agency and found that 330 of the 640 survey respondents (52 percent) reported costs of \$50 or less per request. However, 48 agencies (.08 percent) reported costs of \$200 or more per request, including 23 agencies (.04 percent) that reported costs that ranged from \$1,000 to \$12,500 per request. This variation in costs may be explained by the amount of time spent fulfilling the RTKL requests and/or the hourly wage rate of the employee responding to the requests.

As previously mentioned, the average reported costs would be significantly skewed by the relatively small number of agencies that reported very high costs per RTKL request. Therefore, we averaged the reported costs per request received for the middle 50 percent of the survey respondents, resulting in an average of \$61 per request.<sup>5</sup> With approximately 3,844 agency open records officers (AOROs) for over

<sup>5</sup> We calculated the interquartile mean (a statistical measure of central tendency based on the truncated mean of the interquartile range) to control for the outliers in the data.

6,000 state and local government agencies across Pennsylvania, we previously estimated that state and local government agencies received a combined total of over 109,000 RTKL requests during CY 2016.<sup>6</sup> As shown in Table 4, we estimate that the total annual costs incurred during CY 2016 was \$6.6 million.

Table 4

<b>Reported Annual Costs for Responding to RTKL Requests - CY 2016*</b>		
<b>Average Cost Per RTKL Request</b>	<b>Estimated Number of RTKL Requests</b>	<b>Total Estimated Annual Cost</b>
\$60.79	109,140	\$6,634,621

\* The reported costs include the staff time spent searching, retrieving, reviewing, and providing for redaction of RTKL requests, and any legal costs incurred when an agency has a solicitor review a request. This cost estimate does not include the cost of employee benefits or the legal costs incurred responding to RTKL appeals.

Source: Developed by LB&FC from our CY 2016 specific survey.

## **B. LB&FC Calculated Costs Incurred by Agencies Responding to Right-to-Know Law Requests**

Due to the low survey response rate and our concerns with the reliability of the reported costs incurred, we also estimated an annual range for the cost of wages incurred responding to RTKL requests during CY 2016. To make this calculation, we used the reported number of RTKL requests received, the time spent responding to those requests, and the hourly wages of the lowest paid employees capable of searching, retrieving, reviewing, and providing for redaction of RTKL requests.

***Time Spent Responding to Right-to-Know Law Requests.*** As noted earlier, we estimate that Pennsylvania state and local government agencies received a combined total of over 109,000 RTKL requests during CY 2016, and according to 948 respondents to our CY 2016 specific survey, almost half of the reported RTKL requests received were processed in less than an hour. However, the amount of time spent responding to those requests varies greatly among agencies.

As shown in Table 5, several different types of agencies reported a low percentage of their RTKL requests being processed in less than an hour, while other types of agencies did so for nearly half of their requests, including 90 percent of the requests received by police departments (it is likely that many of the requests received by police departments are for police incident reports, which can typically be fulfilled quickly).

<sup>6</sup> Many AOROs respond to RTKL requests for multiple agency types within their municipalities and, therefore, there are fewer AOROs than agencies. However, the AORO list compiled by OOR may not include all of the AOROs in Pennsylvania.

Although the survey respondents for intermediate units, community colleges, and, to a lesser extent, public school districts reported receiving a small percentage of RTKL requests that they processed in less than an hour, a 2015 survey administered by the Pennsylvania School Boards Association (PSBA) found that 81 percent of all the requests received by those same types of agencies were processed in less than an hour.<sup>7</sup> Furthermore, numerous survey respondents made comments that suggested they misunderstood the question and provided the total amount of time it took to complete the request, instead of the actual labor time spent responding to the request.<sup>8</sup> As a result, it is likely that the number of RTKL requests that took more than 10 hours is actually lower than reported.

Table 5

<b>Average Time Spent Responding to Right-to-Know Law Requests by Individual Agency*</b>						
<b>Agency Type</b>	<b>0-1 Hours</b>	<b>1-3 Hours</b>	<b>3-5 Hours</b>	<b>5-8 Hours</b>	<b>8-10 Hours</b>	<b>Over 10 Hours</b>
Intermediate Unit	0%	38%	13%	6%	4%	40%
PASSHE University	3	18	36	13	18	11
Public Authority	4	41	15	10	6	24
Legislative Agency	6	52	39	3	0	0
Community College	6	13	0	4	4	73
Public Charter School	10	33	10	6	9	33
Conservation District	15	53	6	9	6	12
Public School District	30	29	16	8	5	12
County Government	31	32	15	8	6	8
Judicial District	36	10	30	6	1	18
Commonwealth Agency	46	24	8	9	3	10
Township Government	46	17	12	8	5	11
Borough Government	47	23	12	3	2	13
City Government	50	37	7	2	0	4
Police Department	90	4	0	5	0	1
<b>All Agencies - Average</b>	<b>47%</b>	<b>21%</b>	<b>11%</b>	<b>7%</b>	<b>4%</b>	<b>10%</b>

\* As identified by 948 respondents to our CY 2016 specific survey.

\* Philadelphia did not provide a response for the time spent responding to RTKL requests.

Source: Developed by LB&FC from our CY 2016 specific survey.

***The Hourly Wage Rate of the Lowest Paid Employee Capable of Responding to RTKL Requests.*** The costs incurred for the time spent responding to RTKL requests is also largely dependent on the hourly wage rate of the employee responding. However, as shown in Table 6, agencies reported a broad range in the hourly wage rate of their lowest paid employee capable of searching, retrieving, reviewing,

<sup>7</sup> Pennsylvania School Boards Association (2015). "Right-to-Know Law Survey of Members' Open Records Officers." Mechanicsburg, PA.

<sup>8</sup> We were unable to contact these survey respondents for clarification due to time and staffing limitations.

and providing for redaction of RTKL requests, ranging from a low of \$7.25 per hour for a township to \$88 per hour for a public school district.<sup>9</sup> Several agencies have expressed their opinion that only a solicitor and/or high level executive is capable of properly responding to RTKL requests and, therefore, their reported hourly wage rate for the lowest paid employee is either much higher than the average, or is much lower than the hourly wage rate of the employee that actually responds to their RTKL requests. Moreover, the Office of Open Records’ RTKL Agency Guide recommends that the AORO should be “a senior level staff member so that he or she can quickly access the request, understand the implications of the request, and identify the person or persons who may be in possession of agency records.” Nonetheless, due to data limitations, we used the average reported hourly wage rates to calculate the annual costs of wages incurred by agencies for the time spent responding to RTKL requests.

Table 6

**Reported Hourly Wage Rate of the Lowest Paid Employee Capable of Responding to RTKL Requests\***

Agency Type	Respondents	Reported Hourly Wage Rate <sup>a</sup>		
		Lowest	Highest	Average
Conservation District .....	10	\$14.00	\$25.00	\$18.03
Township Government .....	365	7.25	70.00	18.37
Borough Government .....	202	7.80	39.00	18.51
City Government .....	9	12.00	35.75	20.70
County Government .....	17	9.25	30.15	21.25
Intermediate Unit .....	8	13.00	30.00	23.82
Public School District .....	145	10.00	88.00	25.36
Public Authority .....	22	11.75	55.60	25.72
Judicial District .....	5	19.66	38.00	25.99
PASSHE University .....	5	16.51	50.00	29.30
Police Department .....	12	10.45	50.00	29.33
Public Charter School .....	15	13.00	63.00	31.19
Commonwealth Agency .....	27	14.62	75.00	31.21
Legislative Agency .....	6	23.00	46.16	31.67
Community College .....	3	20.00	55.00	40.54
<b>All Agencies .....</b>	<b>851</b>	<b>\$ 7.25</b>	<b>\$88.00</b>	<b>\$20.98</b>

\* Philadelphia did not provide an hourly wage rate when responding to our CY 2016 specific survey.

<sup>a</sup> Three of the reported hourly wage rates were substantially higher than the average, and therefore were not included in our analysis.

Source: Developed by LB&FC from our CY 2016 specific survey.

***The Estimated Cost of Wages Responding to Right-to-Know Law Requests.***

As shown in Table 7, we estimate that the total annual cost of wages for the time

<sup>9</sup> Three of the reported hourly wage rates were substantially higher than the average, and therefore were not included in our analysis.

spent responding to RTKL requests for all state and local government agencies during CY 2016 ranged between \$5.7 million to 9.7 million.<sup>10</sup> These findings are consistent with our estimate of \$6.6 million in annual costs.

Table 7

**Estimated Cost of Wages for the Time Spent Responding to  
Right-to-Know Law Requests By Agency Type - CY 2016\***

Agency Type	Lower End	Upper End
Conservation District .....	\$ 11,145	\$ 19,825
Legislative Agency .....	10,263	20,879
Intermediate Unit.....	23,282	37,482
PASSHE University.....	44,404	68,222
Judicial District .....	46,504	75,406
Community College.....	86,773	131,827
Public Charter School .....	88,944	141,075
Philadelphia <sup>a</sup> .....	94,720	159,298
Public Authority .....	97,276	160,300
City Government <sup>b</sup> .....	172,641	353,891
Police Department.....	277,852	525,149
County Government <sup>c</sup> .....	454,398	781,233
Public School District .....	703,707	1,184,444
Borough Government.....	816,400	1,394,028
Commonwealth Agency .....	928,956	1,591,850
Township Government .....	1,870,049	3,061,518
<b>All Agencies.....</b>	<b>\$5,727,314</b>	<b>\$9,706,429</b>

\* The estimated cost of wages includes the staff time spent searching, retrieving, reviewing, and providing for redaction of RTKL requests. This cost estimate does not include the cost of employee benefits or the legal costs incurred during solicitor reviews or responding to RTKL appeals.

<sup>a</sup> Philadelphia did not provide data on the time spent responding to their RTKL requests or the hourly wage rate of their lowest paid employee capable of responding to RTKL requests. Therefore, we used the averages for all state and local government agencies to estimate their annual costs.

<sup>b</sup> City Government does not include the City of Philadelphia.

<sup>c</sup> County Government does not include the County of Philadelphia.

Source: Developed by LB&FC from our CY 2016 specific survey.

Most agencies would have incurred these labor costs without receiving RTKL requests. Although some agencies may have hired additional staff in response to the RTKL, most agencies assigned RTKL tasks to existing personnel’s duties and responsibilities. Agencies also received requests for public records prior to the RTKL going into effect on January 1, 2009, and it would be unfair to attribute all these costs to the new requirements of the RTKL. However, some agencies have incurred additional costs due to agencies sending RTKL requests to outside solicitors for review and/or in response to RTKL appeals.

<sup>10</sup> The estimated cost of wages includes the staff time spent searching, retrieving, reviewing, and providing for redaction of RTKL requests. This cost estimate does not include the cost of employee benefits or the legal costs incurred during solicitor reviews or responding to RTKL appeals.

## V. The Number of RTKL Requests Appealed Differs Significantly by Type of Agency

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**Overview:** Although agencies report incurring significant costs responding to Right-to-Know Law (RTKL) appeals, based on our survey responses, only 3 percent of the total RTKL requests received by state and local government agencies were appealed to the PA Office of Open Records (OOR) or the courts during CY 2016. There was, however, substantial variation among agencies. We found that less than 16 percent of the agencies surveyed reported having any RTKL requests appealed during CY 2016, and a relatively small number of those agencies made up a significant portion of the total appeals. Very 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 accurately estimate the annual costs incurred by agencies when responding to RTKL appeals.

### Scope and Methodology

We asked the survey respondents to our CY 2016 specific survey how many of their RTKL requests were appealed to the OOR and/or the courts, what were the results of those appeals, and what were their estimated annual costs for responding to those appeals. We received a response to our first question from 1,073 agencies, providing a 38 percent response rate. However, only a small number of agencies had RTKL requests appealed and/or tracked the costs incurred responding to those appeals, and, therefore, only 162 agencies provided the results of their appeals, and 77 agencies provided their estimated annual costs. Due to the low response rates, 5.7 percent and 2.7 percent, we could not use their responses for the purpose of this study.

### A. The Right-to-Know Law Appeal Process

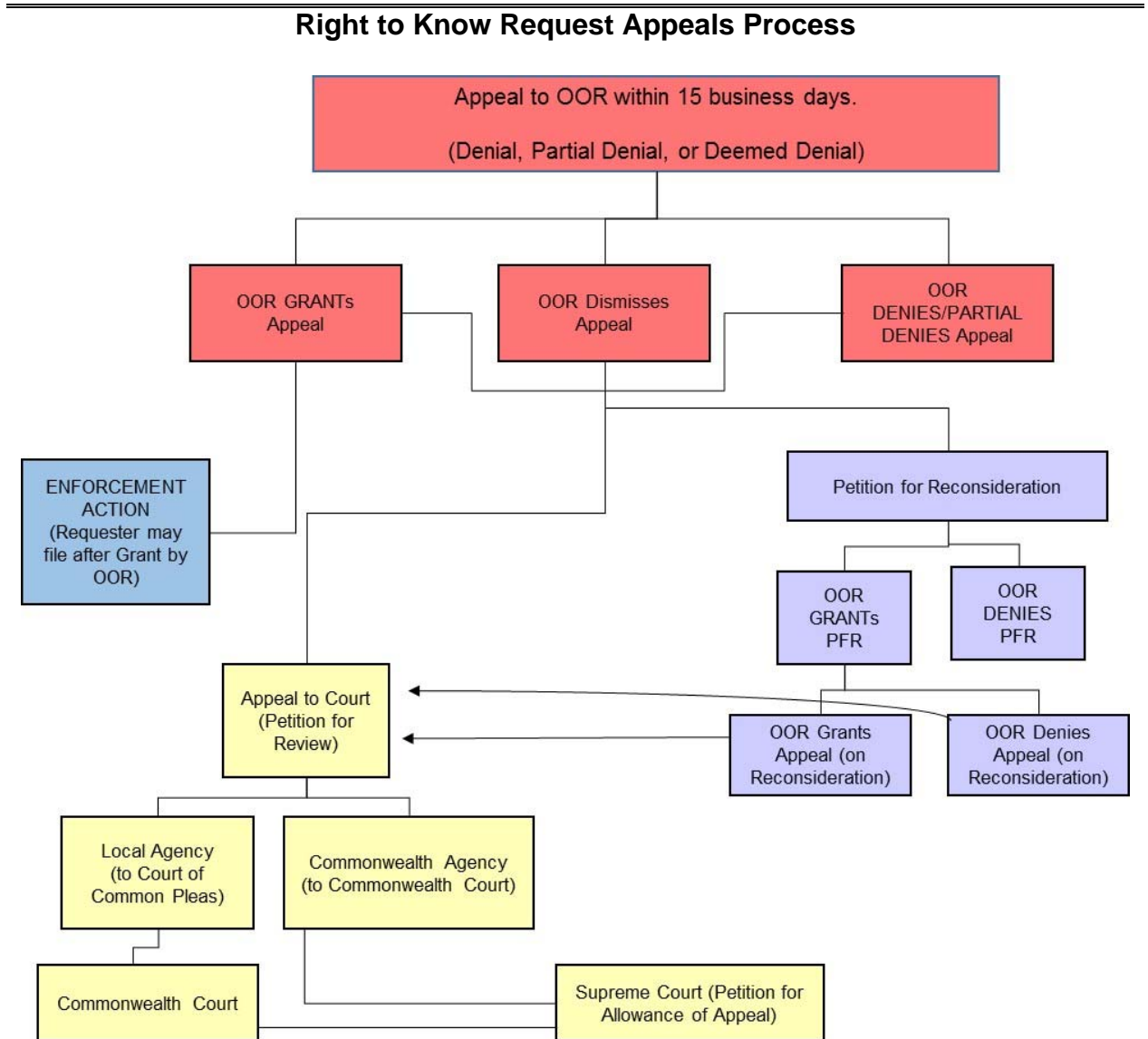
The RTKL appeal process is directed by both the agency from which the underlying request is made as well as, in some cases, the subject matter of the underlying request. Most Commonwealth and local agency denials are appealed to the OOR with other agencies designating appeals officers.<sup>1</sup> Appeals from the decisions

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<sup>1</sup> The Attorney General, State Treasurer, and Auditor General each designate their own appeals officer, as do judicial agencies, the Senate, and the House of Representatives. The Legislative Reference Bureau designates an appeals officer for the legislative service agencies. The District Attorney's Office designates an appeals officer for matters related to access to criminal investigative records in possession of a local agency.

of the appeals officers are to Commonwealth Court for Commonwealth agencies, judicial agencies, and legislative agencies and to the Courts of Common Pleas for local agencies. See Exhibit 7 for the appeals process.

Exhibit 7



Source: Office of Open Records.

**Appeals From Agency Determinations Have Time Constraints.** As noted above, requesters may appeal the decisions of most agencies to the OOR. An appeal from the initial denial of a written RTKL written request<sup>2</sup> must be filed within 15 business days of the mailing date of the agency’s response, or 15 business days of a

<sup>2</sup> Although a written request is not required for an agency to provide public records to a requester, appeal rights only attach to a written RTKL request.



deemed denial.<sup>3</sup> The agency then has seven business days to respond to the appeal; however, a third party with a direct interest has 15 calendar days from actual knowledge of the appeal (but no later than the date the appeals officer issues a decision) to respond to the appeal. Parties to an appeal can seek an extension from the OOR for these internal submission deadlines. The OOR must issue a final determination within 30 calendar days (unless the requester agrees to an extension) or the appeal is deemed denied.

The appeal process may be used, in part, for the agency to respond to the request outside the 5 business-day and 30 calendar-day extension period. For example, a requester we spoke with has withdrawn numerous appeals due to the agency providing the records after he had filed his appeal. Another requester provided similar examples based on her experiences with OOR appeals. If a request is fulfilled, but the requester does not withdraw their appeal, the appeal will generally be found moot.

***Appeals From OOR Final Determinations.*** In cases where the OOR issues a final determination in favor of the agency, the requester would have to appeal that decision to the appropriate court if they wanted to pursue their case. According to individual requesters we have spoken with, the costs associated with an appeal of an OOR order to court can be prohibitive, and factors into their decision to accept the determination of the OOR or to continue to pursue their case. One requester we spoke with contacted an attorney whose practice includes cases related to the RTKL and was told that his fee to accept the case was a \$3,000 retainer. The requester contacted another attorney in another RTKL matter and was told his retainer was \$1,500. In both cases, the requester would also be responsible for other costs associated with the appeal. This requester chose not to pursue these cases as “it was not worth it in my situation.”

Another requester we spoke with, however, has pursued several cases through the courts, including a case he appealed to the Pennsylvania Supreme Court. According to this requester, appeals to Commonwealth Court have never cost less than \$10,000.

Although the OOR may issue a final determination that finds in favor of the requester, and orders the agency to provide the public records sought to the requester within 30 days of the order, the OOR has no mechanism to enforce its order. Therefore, if the agency does not appeal the order of the OOR, but also does not provide the records to the requester as ordered, the requester must go to court to have the order enforced. This potentially requires the use of an attorney if the requester cannot represent themselves. The OOR does not have data on how frequently agencies fail to comply with its orders.

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<sup>3</sup> A request is deemed to be denied if the agency fails to send the response within five business days of receipt of the written request for access (in the absence of a 30 calendar-day extension).



**Award of Fees and Penalties.** The RTKL does provide for the award of attorney's fees and the cost of litigation (or an appropriate portion thereof) if the court reverses the final determination of the appeals officer or grants access to a record after access was deemed denied if the court finds either (1) the agency willfully or with wanton disregard deprived the requester access to a public record, or otherwise acted in bad faith; or (2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of the law. If the court determines that the legal challenge was frivolous, as brought by either the agency or the requester, the court may order reasonable attorney's fees to either party. Civil penalties of not more than \$1,500 are also available if the court finds the agency denied access to a record in bad faith. In addition, the failure of the agency or public official to promptly comply with the court order may incur a penalty of not more than \$500 a day until the records are provided.

The standard to assess penalties is high and, therefore, penalties have not been assessed in a large number of cases. In 2013, in *Ledcke v. County of Lackawanna*, the Common Pleas Court of Lackawanna County found the appeal of the agency's contractor to be frivolous as the contractor in the initial denial claimed the records were confidential but, in its appeal, claimed the records did not exist at the time of the denial. An appeal, however, was not found to be frivolous where the agency raised an issue of first impression that had not been squarely addressed by an appellate court in Pennsylvania<sup>4</sup> and, therefore, counsel fees and costs were denied. In a 2016 case, the Commonwealth Court held the Department of Human Services in contempt for failing to comply with a remand order that required disclosure. Recently, the Commonwealth Court upheld the decision of a lower court that imposed a \$500 penalty on the Philadelphia District Attorney's Office after finding bad faith in the denial of a request by the office.<sup>5</sup>

However, regardless of the potential recovery of legal costs, the extensive amount of time that is required, the complexity of navigating the legal system, and the high initial legal costs are likely to restrict the average persons' willingness and ability to appeal agency and OOR decisions to the courts, which may reduce government transparency.

**Mediation Process.** As authorized by the RTKL, the OOR has established a mediation process to address appeals in a less formal manner that can save time and expense for the parties. Both parties, however, must agree to its use. The OOR appeal form contains a box that can be checked stating, "I am interested in resolving this appeal through OOR mediation." If mediation is successful, the requester withdraws the appeal when he is satisfied that the agency has complied with the mediated agreement. If the mediation is not successful, the appeal process begins.

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<sup>4</sup> *Mid Valley School District v. Warshawer*, 33 Pa. D. of C. 5<sup>th</sup> 272 (Common Pleas Court of Lackawanna County, 2013).

<sup>5</sup> *Office of the DA of Phila. v. Bagwell*, 155 A3.d 1119 (Pa. Cmwth 2017).

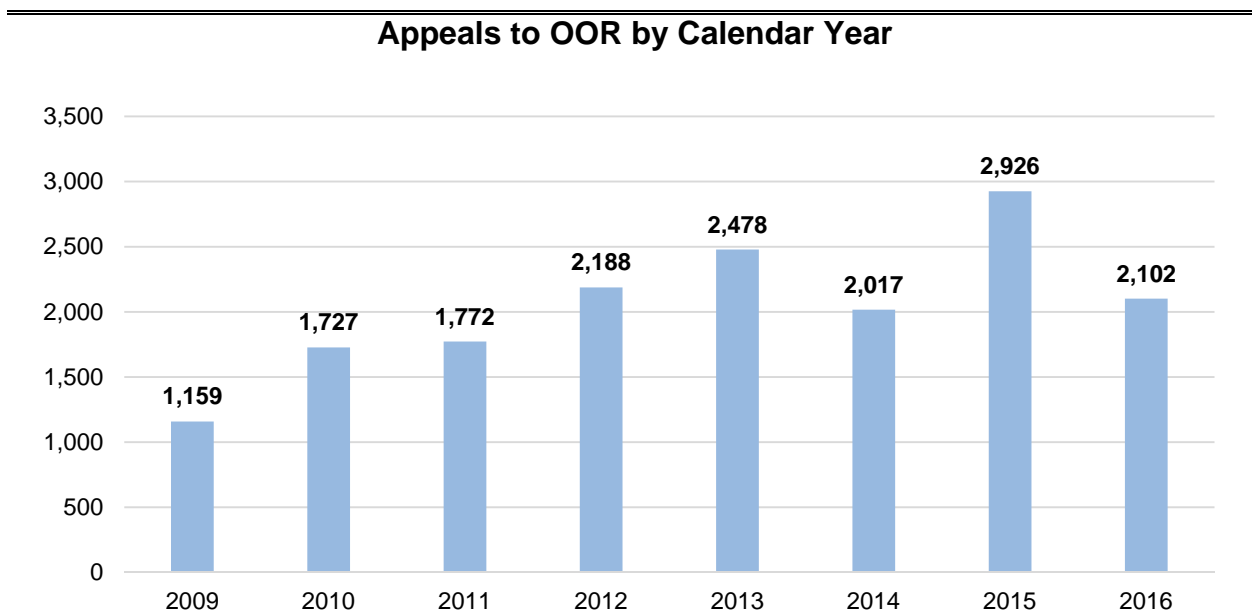
OOR has mediated approximately 138 appeals since 2009, with 79 being mediated in 2016.

## B. The Number of Right-to-Know Law Requests Appealed

Agencies report incurring significant costs responding to RTKL appeals. However, we found that only a small percentage of agencies have RTKL requests appealed and a relatively small number of those agencies make up a significant portion of those appeals.

**RTKL Requests Appealed to the OOR.** As shown in Exhibit 8, after hitting a high of over 2,900 appeals to the OOR during 2015, the number of appeals has begun to level off, with OOR officials speculating that the number will remain at approximately 2,500 per year over the next several years.

Exhibit 8



Source: Developed by LB&FC staff from data provided by OOR staff.

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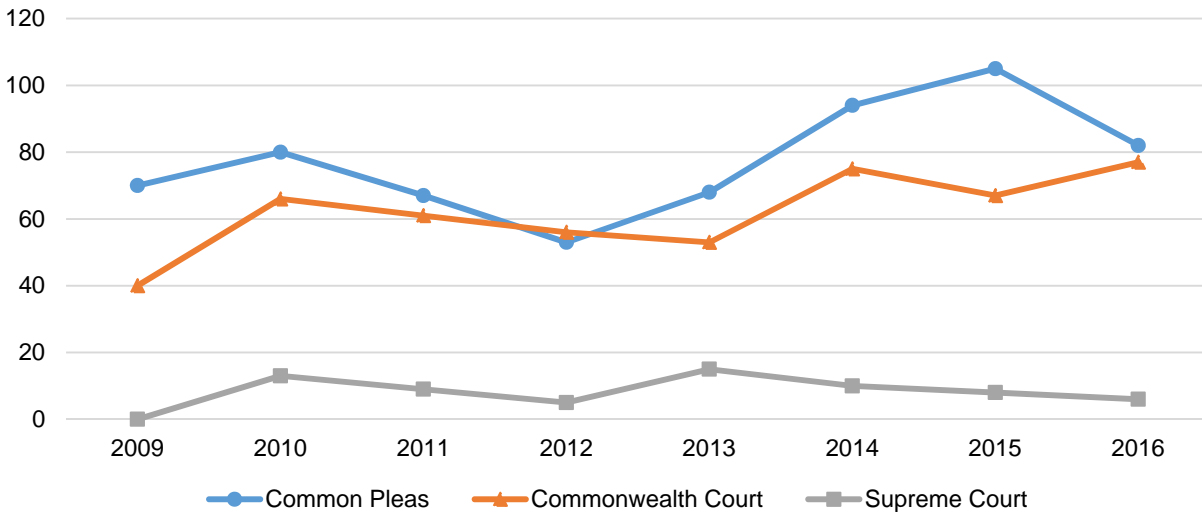
**RTKL Requests Appealed to the Courts.** Similar to the appeals to the OOR, as shown in Exhibit 9, the number of appeals to the courts gradually increased from CY 2009-15, except for a drop from CY 2011-12. However, after peaking in CY 2015, the overall number of appeals declined during the following year, and now appears to be leveling off at about 160 appeals each year. This number may be low, however, due to the fact that OOR is not always informed when an appeal to the courts is taken.

Exhibit 9

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**Appeals to Common Pleas, Commonwealth Court, and Supreme Court**



Source: Developed by LB&FC staff from data provided by OOR staff.

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The recent reduction in the number of appeals to the OOR and the courts suggests that agencies and RTKL requesters are becoming increasingly knowledgeable about the law, and certain issues related to the law have been settled by the courts. However, there remains a relatively small number of agencies that have a high number of RTKL requests appealed.

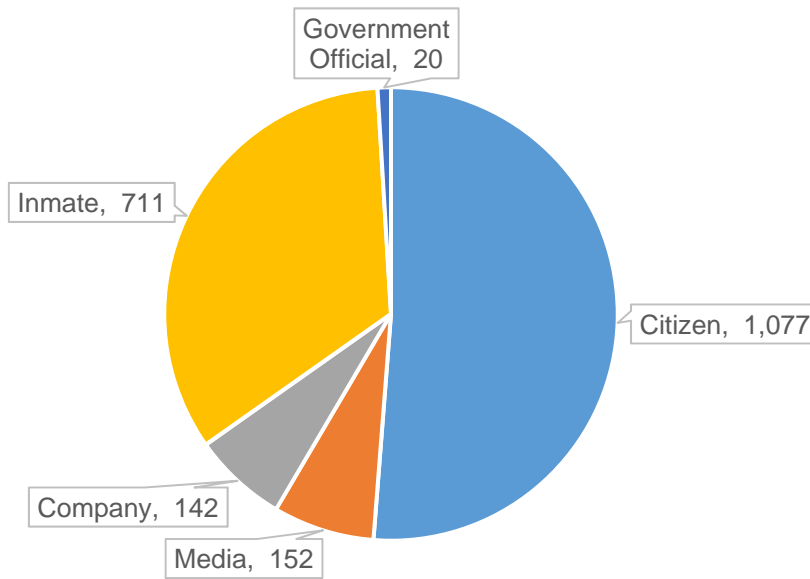
***The Results of the RTKL Requests Appealed to the OOR.*** As stated in the OOR Annual Report for CY 2016, over half of the 2,102 RTKL requests appealed to the OOR during 2016 were filed by average citizens, providing evidence that the RTKL is being used by the public to access public records as intended by the law. Another 34 percent of the appeals were from inmates, with the remaining 15 percent from the media, companies (commercial), and government officials. See Exhibit 10.

Exhibit 10

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**2,102 Appeals Filed to the OOR by Type of RTKL Requester During CY 2016\***

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Source: PA Office of Open Records' Annual Report for CY 2016.

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The results of these RTKL appeals can be grouped into six categories: granted, withdrawn, moot, denied, dismissed, and transferred.<sup>6</sup> Although requesters gain access to the records requested when appeals are granted, they also often gain access when appeals are withdrawn (only the requester can withdraw an appeal) or found to be moot (usually because records were provided during the appeals process). As shown in Exhibit 11, approximately 40 percent (549) of the 1,391 non-inmate appeals were granted, withdrawn, or found to be moot. Less than a quarter of the appeals to the OOR are denied. The OOR annual reports do not provide the results for the appeals from inmates.

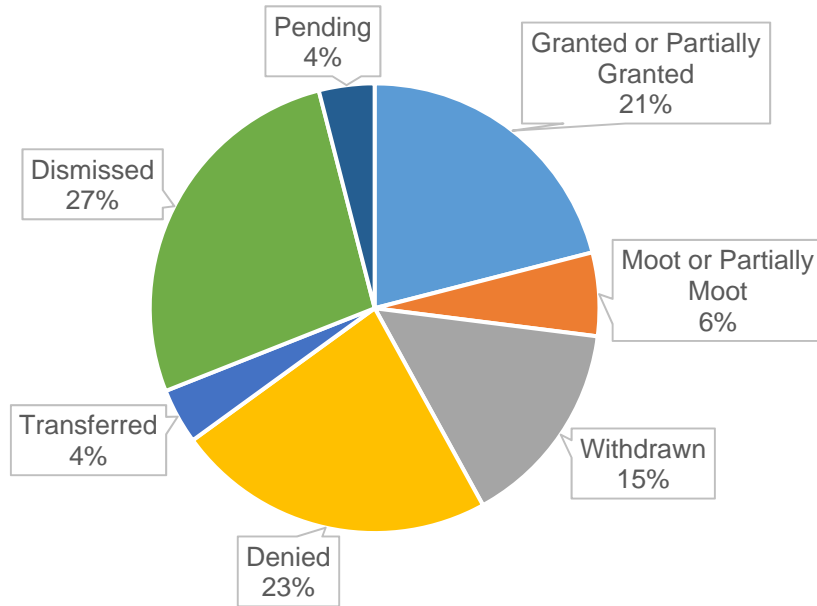
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<sup>6</sup> The most common reason appeals are dismissed is that they're filed too early or too late. (Appeals filed too early can be refiled.) Appeals are transferred when the OOR is not the proper venue (e.g., appeals involving a judicial agency or statewide row office).

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**Results of the 1,391 Non-Inmate Appeals Filed to the OOR During CY 2016**

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\* This chart analyzes non-inmate appeals only. The most common reason appeals are dismissed is that they are filed too early or too late (appeals filed too early can be refiled). Appeals are transferred when the OOR is not the proper venue (e.g., appeals involving a judicial agency or statewide row office).

Source: PA Office of Open Records' Annual Report for CY 2016.

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**CY 2016 Specific Survey.** We found that few RTKL requests were appealed during CY 2016, and only a small percentage of the agencies surveyed had one or more requests appealed. According to 1,073 respondents to our CY 2016 specific survey, less than 3 percent of the total RTKL requests received were appealed to the OOR and/or the courts during CY 2016.<sup>7</sup> As shown in Table 8, there is some variation among the different types of agencies in the percentage of RTKL requests appealed, especially for public authorities and legislative agencies. The survey respondents for community colleges and public charter schools reported having no RTKL requests appealed to the OOR or the courts during CY 2016.

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<sup>7</sup> Legislative agency appeals go to the Legislative Reference Bureau instead of the Office of Open Records.

Table 8

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**RTKL Requests Appealed During CY 2016**


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Agency Type	Respondents	Requests Received	Requests Appealed			
			OOR	Courts	Total	Percent
Community College.....	4	77	0	0	0	0.0%
Public Charter School ..	22	71	0	0	0	0.0
Police Department.....	19	2,763	11	3	14	0.5
Township Government .	436	10,216	71	7	78	0.8
Conservation District....	12	108	1	0	1	0.9
County Government.....	27	3,391	54	2	56	1.7
Borough Government...	246	4,694	66	33	99	2.1
Judicial District .....	19	171	3	1	4	2.3
Public School District ...	175	2,746	64	4	68	2.5
City Government .....	10	1,146	34	3	37	3.2
Intermediate Unit.....	9	57	2	0	2	3.5
PASSHE University.....	8	205	7	2	9	4.4
Commonwealth Agency	49	9,515	421	52	473	5.0
Philadelphia.....	1	1,834	89	11	100	5.5
Public Authority .....	25	137	28	0	28	20.4
Legislative Agency <sup>a</sup> .....	11	127	21	7	28	22.0
<b>All Agencies.....</b>	<b>1,073</b>	<b>37,258</b>	<b>872</b>	<b>125</b>	<b>997</b>	<b>2.7%</b>

<sup>a</sup> Legislative agency appeals go to the Legislative Reference Bureau, instead of the Office of Open Records.

Source: Developed by LB&FC from our CY 2016 specific survey.

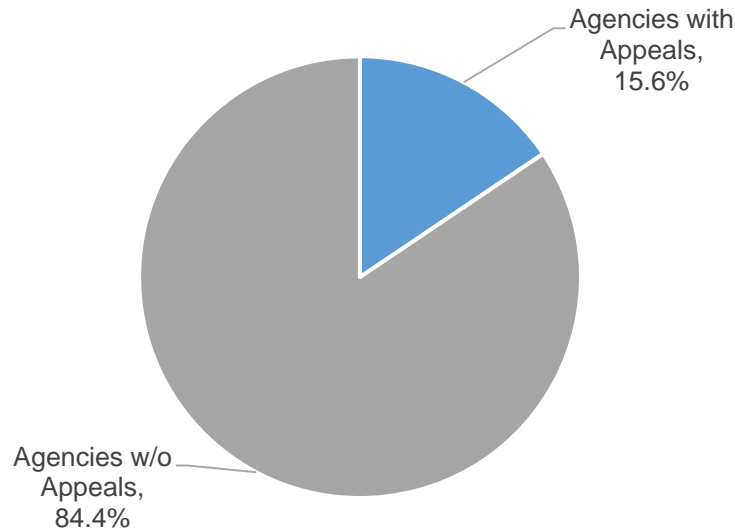
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There is also substantial variation in the number of RTKL requests appealed dependent on the individual agency. As illustrated in Exhibit 12, only 167 of the 1,073 survey respondents reported having one or more of their RTKL requests appealed to the OOR or the courts. Moreover, 38 of those agencies accounted for almost 80 percent of the total appeals reported in our survey. Table 9 demonstrates how most of the different types of agencies have a single agency that received a significant portion of the RTKL requests that were appealed. For example, the PA Department of Corrections accounted for 53 percent of all the surveyed Commonwealth agencies' appeals and 25 percent of all the reported RTKL requests appealed. Consequently, a small number of agencies make up a significant portion of the RTKL requests appealed.

Although the majority of state and local government agencies have few to no RTKL requests appealed to the OOR or the courts, there is a relatively small number of agencies that do experience a large number of appeals and, therefore, may incur substantial costs in legal fees when responding to those appeals. Only 77 of the 1,093 respondents to our CY 2016 specific survey were able to provide us with their estimated annual costs for responding to their RTKL appeals, and, as a consequence, we were unable to accurately estimate the annual costs incurred by agencies when responding to RTKL appeals.

Exhibit 12

**Percentage of Agencies With RTKL Requests Appealed During CY 2016\***



\* As identified by 1,073 respondents to our CY 2016 specific survey.

Source: Developed by LB&FC from our CY 2016 specific survey.

Table 9

**Percentage of RTKL Requests Appealed During CY 2016**

	Respondents	Total Requests Appealed	Highest Number of Appeals for an Individual Agency	Percent of Total Appeals
Township Government .....	436	78	8	10%
County Government .....	27	56	10	18
City Government .....	10	37	7	19
Police Department.....	19	14	3	21
Public School District .....	175	68	22	32
PASSHE University .....	8	9	3	33
Judicial District .....	19	4	2	50
Commonwealth Agency .....	49	473	252	53
Borough Government.....	246	99	55	56
Legislative Agency .....	11	28	22	79
Public Authority .....	25	28	25	89
Conservation District.....	12	1	1	100
Intermediate Unit.....	9	2	2	100
Philadelphia.....	1	100	100	N/A
Community College.....	4	0	0	N/A
Public Charter School .....	22	0	0	N/A
<b>All Agencies.....</b>	<b>1,073</b>	<b>997</b>	<b>252</b>	<b>25%</b>

Source: Developed by LB&FC from our CY 2016 specific survey.

## VI. Agencies Have Expressed Concerns About Burdensome Requests but There Is Little Consensus on What Is “Overly Burdensome”

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**Overview:** Agencies frequently report commercial requests, discovery/litigation requests, inmate requests, and repeated requests from the same individual requester as being the most time-consuming and disruptive Right-to-Know Law (RTKL) requests. The RTKL, however, does not restrict these types of requests, and the courts have held that the volume of records alone does not equate to being disruptive or overly burdensome.

Based on our survey results, we found that there is little consensus among agencies on how time-consuming an RTKL request must be for it to be considered an overly burdensome request. Almost 33 percent of all the RTKL requests considered overly burdensome were fulfilled in less than three hours, another 33 percent took between three to eight hours, and over 34 percent required eight hours or more. Therefore, the issue of burdensome requests appears to be highly dependent on what the agency perceives to be burdensome. This suggests that the issue is more directly related with concerns about the type of request being made or who is making the request.

Almost 35 percent of all the RTKL requests received by our survey respondents were identified as being for a commercial purpose, with 69 percent of the agencies surveyed reporting that they received at least one request for a commercial purpose. Moreover, nearly half of the commercial requests were reported as being made from outside of Pennsylvania. Almost 10 percent of the requests received were identified as being related to litigation against the agency, with 32 percent of the agencies surveyed receiving these types of requests. Although 7 percent of the reported RTKL requests received during CY 2016 were identified as being from incarcerated persons, only 6 percent of the agencies surveyed reported receiving requests from inmates, with the Department of Corrections receiving over half of all the inmate requests reported.

We also found little variation in the amount of time spent responding to the different types of requests, with roughly two-thirds of all general, commercial, discovery, and research requests being fulfilled in less than three hours. However, almost all inmate requests were reported as being fulfilled within that same time period.

Several states have attempted to address the burdensome nature of requests by authorizing fees to be charged for some of the staff time involved in fulfilling a request, sometimes specifying the types of requests for which fees may be charged.



## Scope and Methodology

We asked the survey respondents to our CY 2016 specific survey how many RTKL requests did their agency receive during CY 2016; how many different requesters made those requests; how many of their requests were considered overly burdensome, and how much time was spent responding to those requests; how many of their requests were commercial, discovery/litigation, inmate, media, and research requests, and how much time was spent responding to those requests; and how many of their requests came from outside of Pennsylvania and, of those out-of-state requests, how many were for a commercial, media, or research-related purpose. The response rate varied for each question, ranging from 19 to 37 percent.

### A. The Right-to-Know Law Does Not Define Burdensome Requests

Since the RTKL went into effect in January 2009, numerous state and local government agencies have reported an ongoing issue with a large number of exceedingly voluminous and/or time-consuming RTKL requests that they consider overly burdensome.

Examples of these “overly burdensome” RTKL requests include:

- A 31 paragraph request to a township seeking, in part, “any and all” emails, contracts, meeting minutes, etc., concerning identified litigation and roadways between 2005 and the present (August 7, 2015). This request resulted in 3,727 pages being copied at a cost to the requester of \$969.32 (including shipping charges). This township has no website, municipal building, or full-time employees.
- A request to a school district that sought all “correspondence dating from January 1, 2004, including without limitation letters, emails, memoranda, minutes and notes with respect to the construction of [two schools] among and between any of the following: employees, board members and other representatives of the [school district]; employees and representatives of the Pennsylvania Department of Education (“PDE”); and third party consultants, agents, contractors, engineers, architects, construction managers and other professionals for either the [school district] or PDE.” The request involved the production of approximately 30 boxes of documents and a hard drive with several gigabytes of data and a legal review of the documents to ensure compliance with the law. The requester never came in to inspect the records once they were produced.

- A request to a municipal government for certified copies of the following: the most recent eleven budgets; all economic models and forecasts to generate the budgets for the past ten years, all audited financial statements for the past ten years; copies of documents used to show the tax rate for the past eleven years; lists of all properties receiving tax abatements or exemptions in the municipality and the end date of the abatement of exemption; the number of employees by department for the past eleven years; lists of all real estate holding of the municipality; and copies of all salary data of certain employees and elected officials for the past twenty years.

***The Right-to-Know Law (Act 2008-3).*** The RTKL specifies that the records requested must be “sought with sufficient specificity to enable the agency to ascertain which records are being requested . . . .” However, the law prohibits an agency from limiting the number of records that can be requested or made available for inspection and duplication, and prohibits an agency from limiting the amount of time that will be spent responding to an RTKL request. An agency may deny access to a record “if the requester has made repeated requests for the same record and the repeated requests have placed an unreasonable burden on the agency.” The law, however, does not define what is considered burdensome.

Pennsylvania courts have not clearly defined what is considered a disruptive or burdensome request either. The courts have held that an “open-ended request that gives the agency little guidance regarding what to look for may be so burdensome that it will be considered overly broad.”<sup>1</sup> However, the courts have also held that simply because a request is burdensome does not make the request overly broad and, therefore, employ a three-part balancing test to make this determination, examining the extent to which the request set forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. In discussing the burdensome or disruptive nature of an RTKL request, the courts have held that because a local government has a small part-time staff, it does not follow that the local government is unreasonably burdened by an RTKL request. The volume of records alone does not equate to the request being disruptive or burdensome.

***Overly Burdensome Requests Identified by Agencies in Our Survey.*** We found that there is little consensus among agencies on how time-consuming an RTKL request must be for it to be considered an overly burdensome request. According to 1,048 respondents to our CY 2016 specific survey, almost 18 percent of all the RTKL requests received during CY 2016 were considered overly burdensome. As shown in Table 10, this equates to an overall average of 4 to 5 RTKL requests considered overly burdensome per individual agency.

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<sup>1</sup> *Montgomery County v. Iverson*, 50 A.3d 281, 283 (Pa. Cmwlth. 2012).

Table 10

**RTKL Requests Identified as Overly Burdensome Per Individual Agency\***

Agency Type	Average Number of RTKL Requests Identified as Overly Burdensome	
	Received	Fulfilled
Legislative Agency .....	2.0	0.0
Judicial District .....	0.5	0.5
Public Authority .....	1.4	1.3
Public Charter School ...	1.6	1.6
Conservation District .....	2.0	1.9
Intermediate Unit .....	2.3	2.2
Community College .....	3.8	2.3
Commonwealth Agency	3.3	2.4
Police Department .....	4.7	3.3
Borough Government ...	4.6	4.0
Public School District ...	5.0	4.6
Township Government ..	5.1	4.9
City Government .....	5.2	5.1
County Government .....	15.5	14.8
<b>Total .....</b>	<b>4.8</b>	<b>4.4</b>

\* As identified by 1,048 respondents to our CY 2016 specific survey.

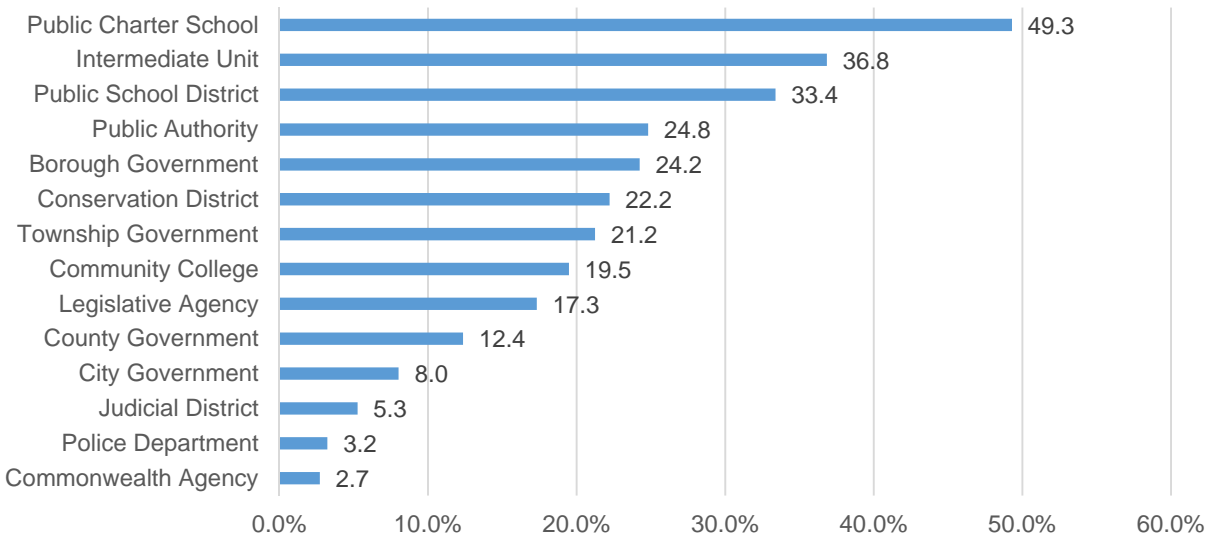
\* Philadelphia did not provide a response for the number of RTKL requests considered overly burdensome.

Source: Developed by LB&FC from our CY 2016 specific survey.

However, as shown in Exhibit 13, there is a substantial difference in the percentage of RTKL requests considered overly burdensome depending on the type of agency. For example, although less than 3 percent of all the RTKL requests received by the Commonwealth agencies in our sample were considered overly burdensome, public charter schools considered nearly half of their requests burdensome. Although some of this variation may be explained by the difference in the number of time-consuming RTKL requests received by the different types of agencies, we found that the number of hours required to be considered overly burdensome varies significantly among the different types of agencies.

Exhibit 13

**Percentage of Right-to-Know Law Requests Considered Overly Burdensome**



\* As identified by 1,048 respondents to our CY 2016 specific survey.

\* Philadelphia did not provide a response for the number of RTKL requests considered overly burdensome.

Source: Developed by LB&FC from our CY 2016 specific survey.

***The Amount of Time Spent Fulfilling the Right-to-Know Law Requests That Agencies Considered Overly Burdensome Varies Significantly.***

The amount of time spent fulfilling the RTKL requests considered overly burdensome was very broad, ranging from requests fulfilled in less than an hour to requests requiring over ten hours to fulfill. According to 529 respondents to our CY 2016 specific survey, almost 33 percent of all the RTKL requests considered overly burdensome were fulfilled in less than three hours, another 33 percent took between three to eight hours, and over 34 percent required eight hours or more. See Table 11. However, as previously stated, several survey respondents made comments that suggested they misunderstood the question and provided the total amount of time it took to complete the request, instead of the actual labor time spent fulfilling the request. As a result, it is likely that the number of RTKL requests that took more than 10 hours to fulfill is actually lower than reported.

Table 11

**Percentage of RTKL Requests Considered Overly Burdensome  
Fulfilled Within the Specified Time Frame\***

Agency Type	0-1 Hours	1-3 Hours	3-5 Hours	5-8 Hours	8-10 Hours	Over 10 Hours <sup>a</sup>
Police Department.....	0%	71%	23%	2%	0%	5%
Borough Government....	22	12	36	8	10	12
City Government .....	2	22	43	13	2	17
Conservation District .....	0	52	13	13	0	22
Township Government ..	15	26	11	16	6	25
Public School District ....	11	20	18	12	12	28
County Government .....	2	2	36	14	1	46
Intermediate Unit.....	0	50	0	0	0	50
Public Authority .....	0	3	14	14	14	57
Public Charter School ...	0	3	15	3	15	65
Commonwealth Agency	0	8	4	12	0	77
Judicial District .....	0	0	0	0	0	100
<b>All Agencies.....</b>	<b>13%</b>	<b>20%</b>	<b>20%</b>	<b>13%</b>	<b>8%</b>	<b>27%</b>

\* As identified by 529 respondents to our CY 2016 specific survey.

\* Philadelphia, PASSHE universities, community colleges, and legislative agencies did not provide a response for the time spent fulfilling RTKL requests considered overly burdensome.

<sup>a</sup> Several survey respondents made comments in our survey that suggested they misunderstood the question and provided the total amount of time it took to complete the request, instead of the actual labor time spent fulfilling the request. As a result, it is likely that the number of RTKL requests that took more than 10 hours to fulfill is actually lower than reported.

Source: Developed by LB&FC from our CY 2016 specific survey.

Evidently, there is little consensus among agencies regarding the amount of time that is required to be considered overly burdensome. Furthermore, a substantial number of the RTKL requests identified as overly burdensome were fulfilled in less than an hour. This suggests that some agencies may be reacting to the person making the request and/or the type of request being made rather than how time-consuming or voluminous the RTKL request may be.

## **B. The Type of Right-to-Know Law Request May Determine if Some Agencies Consider a Request Overly Burdensome**

Agencies and their representative associations have consistently cited different types of RTKL requests that they consider the most burdensome, including: requests for a commercial purpose, often from outside of Pennsylvania; requests from parties currently engaged in litigation or “fishing” for information for future litigation against the agency; requests from incarcerated persons; and repeated requests from an individual requester. Moreover, many agencies have stated that they do not believe that these types of requests were the original intent of the RTKL and,

therefore, do not believe that they should be required to fulfill those types of requests.

**PA School Boards Association Survey.** A 2015 survey conducted by the PA School Boards Association (PSBA) reported similar findings.<sup>2</sup> The PSBA conducted a survey of 585 Agency Open Records Officers (AOROs) and received an overall response from 223 (38 percent) of them. Respondents were from school districts, career and technical schools, intermediate units, and community colleges. The purpose of the survey was to evaluate the number and type of RTKL requests that took an hour or more to process over two school years and to assess what problems the agencies were experiencing with the RTKL.

In response to the survey, 220 of the agencies reported receiving 6,344 RTKL requests over a two-school-year period, with 81 percent of those requests being processed in less than an hour. When the survey respondents were asked what types of requests took more than an hour to process, 67 percent identified requests for a commercial purpose, 72 percent identified requests related to litigation, 44 percent identified media requests, and 59 percent identified repeat requesters. However, no agency in the PSBA survey identified RTKL requests from incarcerated persons as burdensome. Unfortunately, the survey did not seek information on the actual number of hours spent responding to these, or other, requests.

When the survey respondents were asked to describe problems they have experienced with the RTKL over the previous two school years: 29 percent of the respondents cited burdensome requests; 36 percent cited requests made for commercial purposes, often from outside Pennsylvania; and another 30 percent cited the significant amount of time spent responding to RTKL requests which is not compensated and takes them away from their other duties. Furthermore, the survey respondents defined burdensome requests as repeat requests from citizens or employees to harass over decisions they do not like; vague or broad requests; voluminous requests; requests from out-of-state; and requests that they perceive will be used for some sort of fraud or scam.

**Commercial Requests.** Many agencies and their representative associations consistently cite commercial requests as the most burdensome type of RTKL request. As defined in the OOR proposed regulations, commercial requests are requests for public information for the purpose of selling or reselling any portion of the record, to obtain names and addresses from the record for the purpose of commercial solicitation, or in a manner through which the requester can reasonably expect to generate revenue.

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<sup>2</sup> Pennsylvania School Boards Association (2015). "Right-to-Know Law Survey of Members' Open Records Officers." Mechanicsburg, PA.

The PA State Association of Township Supervisors provided the following statement before the PA Senate State Government Committee in 2013:

The number one complaint was that businesses and vendors are requesting copies of building permits and other documents for solicitation purposes. Nearly all the municipalities in Lancaster County receive the same type of request on a monthly basis from a variety of businesses. We don't know whether these entities plan to sell satellite dishes, yard services, pools, etc. And to be honest, that is not what concerns us. What does matter to us is that these municipalities can only charge for copying and mailing costs and not the staff time needed to fulfill these regularly occurring requests.

The County Commissioner's Association of Pennsylvania provided the following statement before the PA House State Government Committee in 2016:

Counties, like other local governments, have reported that the greatest increase in requests under the new Right to Know Law are for records to be used for commercial purposes, including information regarding excess proceeds from tax sales, unclaimed funds, environmental sites assessments, union payrolls, bid packages, contracts and RFPs, and questionnaire and research projects. While this information may be available for purchase elsewhere, companies and other organizations have found that they can get this information through public records and are turning to Right-to-Know requests as a way to limit their own expenses, but at the expense of the taxpayer instead.

The PA State Association of Boroughs provided the following statement before the PA House State Government Committee in 2016:

Seven years have passed as boroughs have functioned under Act 3. They have adapted to the demands of the Act and its impact with the public....However, what has occurred as well, is a discrete element of the public making requests has manipulated the Act into a profit making venture at the expense of taxpayers. Specifically, our boroughs have been confronted with requests made by commercial interests seeking to data mine a potential customer base at the taxpayers' expense. Several members have been inundated by out-of-state requests for records as well. Ranging from research requests of students in California to criminal attorneys in Florida, the surge of frivolous out-of-state requests since the enactment of Act 3 certainly justifies examination of the Right-to-Know law and how self-interested requestors have gamed the system to a profit-driven end.

Nonetheless, the RTKL does not permit an agency to restrict access to public records based on the purpose of the request or who is making the request, nor does the law require a person requesting the records to identify themselves or disclose why they want the public records.

***Discovery/Litigation Requests.*** Agencies and their representative associations also frequently cite discovery type requests from individuals either currently engaged in litigation with the agency or “fishing” for information for future litigation against the agency to be burdensome, given that the process of discovery through the court during litigation provides the appropriate mechanism for individuals to receive the public records.<sup>3</sup>

The Pennsylvania School Boards Association provided the following statement before the PA Senate State Government Committee in 2013:

As special counsel for several districts, we are encountering RTKL requests that endeavor to secure discovery for litigation purposes, in advance of filing a claim and without adherence to discovery rules. The RTKL response to broad, discovery-style requests is more burdensome than the discovery would be! First, there is no limitation as to relevance. Secondly, there is no option to open files for examination by the RTKL requester – the documents have to be copied and produced. Thirdly, there is no judicial oversight to limit unreasonable requests.

The PA State System of Higher Education provided the following statement before the PA Senate State Government Committee in 2013:

We also receive a number of requests each year from law firms that would appear to be using the RTKL as a less expensive alternative to the legal “discovery” process. In one instance in 2012, such a request resulted in the need to gather and review more than 2,100 pages of documents. At 25 cents per page, such a request would cost, at most \$525, assuming all of the documents were hard copies; likely far less than if the same materials were obtained through discovery. In essence, we are doing much of the legwork necessary in preparing for a case at a very small cost. [PASSHE] recommends permitting additional fees to process these types of requests, as well.

A recent Commonwealth Court decision held, however, that records that were part of a discovery order and process were required to be provided pursuant to an

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<sup>3</sup> “Discovery” is the compulsory disclosure, at a party’s request, of information that relates to the litigation. Discovery has a broad scope allowing inquiry into any matter, not privileged, that is relevant to the subject matter of the action. (Black’s Law Dictionary)



RTKL request.<sup>4</sup> In this case, the Philadelphia District Attorney's Office had argued that the civil discovery rules controlled where civil litigation is ongoing, as the judiciary has exclusive authority over the conduct of litigation, including discovery. This decision is being appealed to the Pennsylvania Supreme Court.

***Inmate Requests.*** Some agencies and their representative associations have cited burdensome requests from incarcerated persons, though there has been no distinction between federal, state, or local inmates or whether the inmates were located outside of Pennsylvania.<sup>5</sup>

The PA State Association of Township Supervisors provided the following statement before the PA House State Government Committee in 2013:

Some townships have had issues with inmates requesting extensive numbers of documents, in some cases in what appears to be an attempt to gain information about the arresting officer.

The PA State Association of Township Supervisors provided the following statement before the PA House State Government Committee in 2016:

Another major public policy question is the degree to which convicted, incarcerated individuals should be able to make use of the Right-to-Know Law, which is almost exclusively at taxpayer expense.... Certainly information that relates to inmates, their case, and their care should be reasonably accessible to them. However, inmates use the time on their hands to submit voluminous requests, often to the local government responsible for putting them behind bars. At times it is a means to harass the police officer who brought them to justice and in other instances, serves simply to create havoc at taxpayers' expense.

The County Commissioner's Association of Pennsylvania provided the following statement before the PA House State Government Committee in 2016:

Counties have reported an ongoing issue with time-consuming requests from prison inmates. Sometimes, these requests seek records that are not in the county's possession or that do not even exist, but the agency is required to respond to all requests and to invest additional time if an appeal is taken. We understand, though, that a

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<sup>4</sup> *Office of DA of Phila. V. Bagwell*, 2017 Pa. Commw. LEXIS 30.

<sup>5</sup> Senate Bill 2017-465 would restrict inmate access to specific records pertaining to the inmate and the correctional institutions. According to Department of Corrections officials, restricting inmate access will not reduce the number of requests submitted but would increase the number of denials, and, therefore, the number of appeals. Consequently, restricting inmate access may increase the costs incurred by agencies. See Appendix B for other pending bills.

balance must be struck between the ability of inmates to procure information relevant to their own cases and the ability of inmates to submit excessive and obviously frivolous requests.

**Repeat Requesters.** Several agencies, primarily public school districts, have also cited repeat requesters that make frequent and burdensome requests.

The Pennsylvania School Boards Association provided the following statement before the PA Senate State Government Committee in 2013:

We have some requesters who make frequent and burdensome requests, always several at a time and always with multiple parts to each request. For example, one requester, since 2009, has submitted 147 requests and related individuals and groups have submitted another 91 on very similar but not identical topics. Generally, these come in groups of as many as seven requests at a time. Most recently, we received a request for all bills paid to a food service contractor. It took one staff member two solid weeks to review these and complete redactions and other staff members handled the copying. The district spent about 100 hours of clerical time responding to this request. This is a typical example in responding to this requester and the related individuals and groups. We need to be able to charge for staff time spent in searching for, redacting and copying records.

**LB&FC Survey on the Different Types of Right-to-Know Law Requests Received.** The RTKL does not require requesters to identify themselves or disclose why they want the public records.<sup>6</sup> However, some requesters voluntarily provide this information and agencies can often make a reasonable determination of the purpose of the request by the nature of the information requested. For example, a request for the addresses of all home owners that have applied for fencing permits during a particular timeframe can reasonably be assumed to be for a commercial purpose. As such, 95 percent of our respondents to our CY 2016 specific survey were able to reasonably identify the purpose of the RTKL requests received and 72 percent were able to identify the number and type of requests that came from outside of Pennsylvania. Exhibit 14, provides the definitions for each of the different types of RTKL requests.

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<sup>6</sup> An agency may require an RTKL requester to provide a name and address when submitting a written request.

Exhibit 14

**Definitions for Specific Types of RTKL Requests**

Request Type	Definition
General Requests	Requests that agencies received from individuals for a general purpose and/or were unable to identify as being a commercial, discovery/litigation, inmate, media, or research request, were categorized as general requests.
Commercial Requests	Requests for public information for the purpose of selling or reselling any portion of the record; to obtain names and addresses from the record for the purpose of commercial solicitation; or in a manner through which the requester can reasonably expect to generate revenue.
Discovery / Litigation Requests	Requests from individuals either currently engaged in litigation with the agency or “fishing” for information for future litigation against the agency.
Inmate Requests	Requests from a person incarcerated in federal, state, or local detention/correction facilities, including those located outside of Pennsylvania.
Media Requests	Requests for the use of a public record by the news media, a journalist or an author for news gathering or dissemination in a newspaper, periodical, book, digital publication or radio or television news broadcast.
Research Requests	Requests for the use of a public record by an educational or noncommercial scientific institution for scholarly or scientific research.
Out-of-State Requests	Requests from a person or organization from outside of Pennsylvania.

Source: Developed by LB&FC using the language from the current draft of OOR regulations (3-1-2017).

According to our survey results, we found that most agencies receive a small number of requests per individual requester, though, some agencies do receive numerous requests from the same person or organization. Over half of the 1,032 respondents to our CY 2016 specific survey, reported receiving one request per requester, over 37 percent averaged two to four requests per requester, and another 10 percent averaged five or more requests. Though, it is likely that many of these repeat requesters are for a commercial purpose, since these types of requests tend to be for the same types of information over different fiscal periods.

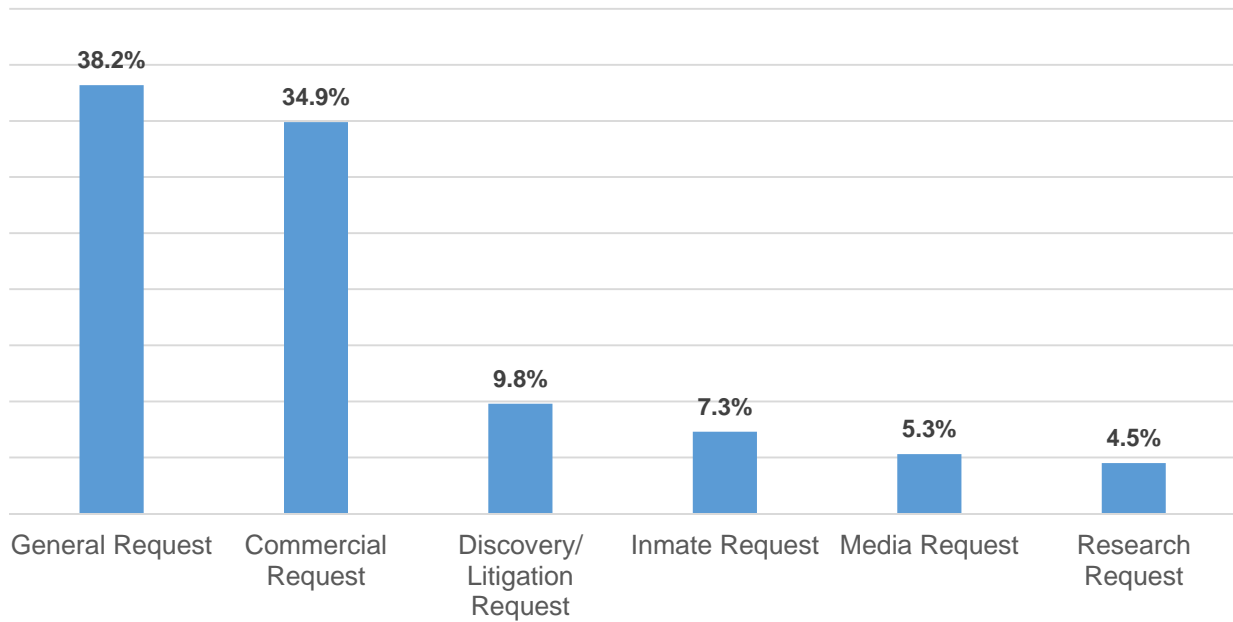
Most of the RTKL requests received by our survey respondents were identified as being for a general purpose. However, as shown in Exhibit 15, almost 35 percent of the RTKL requests were identified as being for a commercial purpose, with 69 percent of the agencies surveyed reporting that they received at least one request of this type. Almost 10 percent of the requests received were identified as being for a litigation-related purpose, with 32 percent of the agencies surveyed receiving these types of requests.

Although 7 percent of the reported RTKL requests received during CY 2016 were identified as being from incarcerated persons, only 66 of the 1,037 respondents (6.4 percent) reported receiving requests from inmates, with the Department of Corrections (DOC) receiving over half (52 percent) of all the inmate requests reported. DOC officials indicated that they do not consider these types of requests burdensome, and the Department is currently developing an information database for

inmates to reduce the number of requests. DOC officials expressed concern that restricting inmate access to specific records pertaining to the inmate and the correctional institutions would not necessarily reduce the number of requests submitted, but would instead increase the number of denials, and therefore, the number of appeals. Consequently, restricting inmate access to public records may increase the costs incurred by agencies.

Exhibit 15

**Percentage of RTKL Requests Received by Purpose During CY 2016\***



\* As identified by 1,037 respondents to our CY 2016 specific survey.

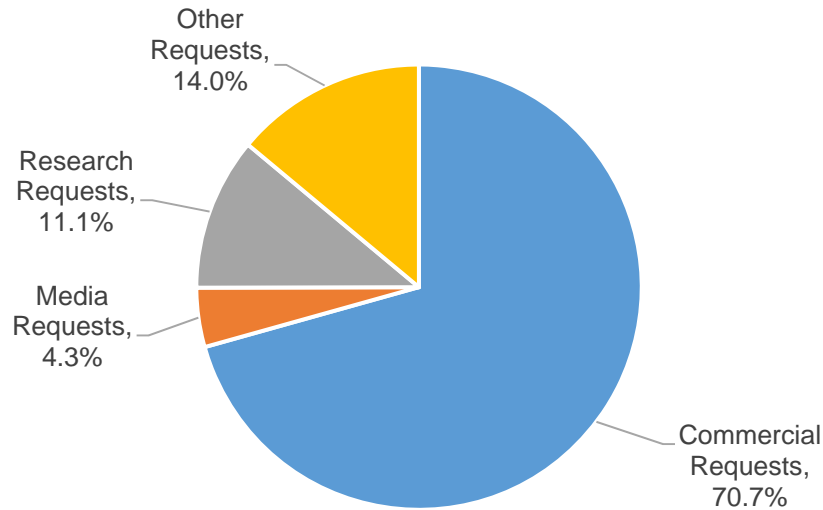
Source: Developed by LB&FC from our CY 2016 specific survey.

Numerous agencies have reported receiving a substantial number of RTKL requests from outside of Pennsylvania, usually for a commercial purpose, and our survey results support these claims. According to 787 respondents to our CY 2016 specific survey, over 26 percent of all the RTKL requests received were made from outside of Pennsylvania, with almost 71 percent of those out-of-state requests being made for a commercial purpose. As illustrated in Exhibit 16, the respondents identified another 15 percent of the requests being made for either a media or research-related purpose, with the remaining 14 percent being made for an unidentified purpose.

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**Percentage of Out-of-State RTKL Requests Received by Purpose During CY 2016\***


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\* As identified by 787 respondents to our CY 2016 specific survey.

Source: Developed by LB&FC from our CY 2016 specific survey.

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**LB&FC Survey on the Time Spent Responding to the Different Types of Requests.** Agencies have reported that the primary reason that commercial, litigation-related, and inmate requests are considered overly burdensome is because the requests are often excessively voluminous and time-consuming, therefore, taking time away from their other duties. However, we found little variation in the amount of time spent responding to the different types of requests, with the exception of media and inmate requests.

As shown in Table 12, roughly two-thirds of all general, commercial, discovery, and research requests are reported to have been fulfilled or denied in less than three hours. On average, this is generally true for all RTKL requests. However, according to 948 respondents to our CY 2016 specific survey, almost all inmate requests (89 percent) were fulfilled or denied within that same time frame, while almost half of the media requests (47 percent) took over three hours to respond.

According to OOR and DOC officials, most inmate requests are either easily denied or fulfilled and, therefore, 96 percent of all the inmate requests received by the DOC were processed in less than an hour. The difference in the time spent responding to media requests may also have a simple explanation, because it could be reasonably assumed that many local media organizations have good working relationships with their local governments and, therefore, are able to get many of their public records outside of the formal RTKL process. As such, it is likely that many of

the simple and/or routine requests made by the media are simply granted without requiring the formal RTKL process, thus explaining the smaller proportion of requests that are fulfilled or denied in less than three hours.

Table 12

<b>Average Time Spent Responding to Right-to-Know Law Requests by Request Type*</b>						
<b>Request Type</b>	<b>0-1 Hours</b>	<b>1-3 Hours</b>	<b>3-5 Hours</b>	<b>5-8 Hours</b>	<b>8-10 Hours</b>	<b>Over 10 Hours</b>
General	48%	18%	13%	7%	3%	11%
Commercial	45	24	9	9	5	9
Discovery	39	25	9	6	7	14
Inmate	75	14	3	2	0	5
Research	43	26	13	6	5	8
Media	30	23	14	9	6	17
<b>All Requests</b>	<b>47%</b>	<b>21%</b>	<b>11%</b>	<b>7%</b>	<b>4%</b>	<b>10%</b>

\* As identified by 948 respondents to our CY 2016 specific survey.

\* Philadelphia did not provide a response for the time spent fulfilling RTKL requests.

Source: Developed by LB&FC from our CY 2016 specific survey.

Nevertheless, regardless of the overall number and type of RTKL requests received, the RTKL has affected various state and local government agencies very differently. While many agencies receive very few RTKL requests each year, some agencies, large and small, receive a large number of requests, and/or a few, very time-consuming and voluminous requests, which could become a financial burden for some agencies.

### **C. The Federal Freedom of Information Act (FOIA) and Other States Approach to “Burdensome” Requests**

Since 1967, the Freedom of Information Act (FOIA) has provided the public the right to request access to records from any federal agency. Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of nine exemptions which protect interests such as personal privacy, national security, and law enforcement. There is no initial fee required to submit a FOIA request, but the FOIA does provide for fees in some instances. For a typical requester, the agency can charge for the time it takes to search for the records and for duplication of those records. There is usually no charge for the first two hours of search time or for the first 100 pages of duplication.

The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not "reasonably

describe" records within the meaning of the law. However, it is well established by the courts that "broad, sweeping requests lacking specificity are not permissible."<sup>7</sup>

Similarly, the open records laws in other states do not specifically define a "burdensome" request, nor do they limit the number of records that can be requested. However, many states stipulate that agencies can charge personnel costs under certain circumstances. According to a report from the National Association of Counties, 38 states allow for some form of personnel costs to be charged for the time spent fulfilling a request for public records, though no state allows an agency to charge more than their actual costs.<sup>8</sup>

Twenty-one of the states only allow an agency to charge personnel fees after a specified amount of time is exceeded, ranging from 30 minutes to 5 hours. For example, Vermont law allows an agency to charge personnel costs after the first 30 minutes is spent responding to a request. On the other end, Alaska law only allows an agency to charge personnel costs if the agency spends more than five hours fulfilling requests from an individual requester over a 30-day period. Florida law allows an agency to charge a special service fee based on the cost to the agency when extensive service from personnel is required to respond to the request.<sup>9</sup> One state, Arizona, only allows agencies to charge personnel costs for commercial requests regardless of the amount of time spent, and the remaining 16 states allow agencies to charge personnel costs for all types of requests regardless of the time spent fulfilling the requests. Additionally, several states specifically charge personnel costs for commercial requests.

Several states also breakdown what personnel costs can and cannot be charged. For example, the State of Washington's law specifies that agencies cannot charge for the time spent searching and locating the requested records. Alaska and South Carolina laws specify that an agency cannot charge for the time spent determining if a requested record is accessible to the public under the state's open records law. Minnesota specifies that an agency cannot charge for the time spent redacting confidential information from the public records. Some states also require agencies to provide the requester with a breakdown of the hourly fees charged and dictate that the state's Attorney General or the open records ombudsmen is responsible for establishing a maximum hourly rate that an agency can charge.

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<sup>7</sup> *Marks v. United States*, 578 F.2d 261, 263 (9th Cir. 1978). See, e.g., *Irons v. Schuyler*, 465 F.2d 608, 613 (D.C. Cir.) (request seeking "all unpublished manuscript decisions of the Patent Office" held "so broad in the context of the Patent Office files" as to be insufficient), *cert. denied*, 409 U.S. 1076 (1972); *Fonda v. CIA*, 434 F. Supp. 498, 501 (D.D.C. 1977) (request for all documents not mentioning plaintiff's name but which "concern her" held too broad).

<sup>8</sup> *Open Records Laws: A State by State Report*, National Association of Counties (2010).

<sup>9</sup> If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

## VII. An Evaluation of Agency Compliance With the Right-to-Know Law: Statutory Posting Requirements and Agency Responsiveness

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**Overview:** Agencies may incur unnecessary costs because they fail to use processes that would reduce the time spent responding to Right-to-Know Law (RTKL) requests and undergo legal costs for unnecessary solicitor reviews and otherwise avoidable RTKL appeals.

We anonymously contacted 588 randomly selected state and local agencies to verbally request that they email us their annual budget, and the majority of the agencies fulfilled our RTKL request by the statutory deadline. However, 41 percent of our requests were deemed denied, meaning the agency refused or never responded to our RTKL request, or fulfilled our request but exceeded the statutory deadline. There was, however, significant variation in the agency's responsiveness dependent on the type of agency. As shown below, although 80 percent of the legislative agencies and county governments fulfilled our request by the statutory deadline, 64 percent of the requests made to PASSHE universities and 75 percent of the requests made to public charter schools were deemed denied. Of the 345 RTKL requests that were fulfilled by the statutory deadline, 68 percent accepted our informal verbal request, 43 percent directed us to their annual budget that was proactively posted on their website, and 70 percent of the agencies fulfilled our request within the same day.

Some agencies automatically use 30-day extensions for most, if not all, of their RTKL requests, regardless of how time-consuming or voluminous a request may be. We also found that at least one agency acknowledges using the 30-day extension to deter RTKL requests. As a result, 30-day extensions are used frequently by some agencies regardless of the type of requests being submitted, however, it appears to be a limited practice. For example, only four of the randomly selected agencies contacted used an extension.

During our review, we found that 70 percent of the randomly selected 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.



## Scope and Methodology

In addition to our CY 2016 specific survey, we assessed a wide-ranging random sample of 588 Pennsylvania state and local government agencies as part of our evaluation of agency compliance and responsiveness with the RTKL.

To evaluate agency compliance with the statutory posting requirements, we reviewed the official website for each agency in our RTKL request sample for the required contact information for the AORO and the OOR, the RTKL request form, and the agency's RTKL regulations, policies, and procedures related to the act. Although not specified by statute, if an agency did post the required RTKL information, we documented if the information was easily located on the agency's website, and what AORO contact information was provided: employee name, telephone number, physical address, and/or email address.

To evaluate agency responsiveness to RTKL requests, we contacted each agency anonymously and used a personal pre-paid wireless account to request that they email us their annual budget to a personal email address in any electronic format that they would prefer. We documented if an RTKL request was fulfilled by the statutory deadline or deemed denied; why those requests were deemed denied; if an informal request was accepted or if a formal written request was required for the requests that were fulfilled; whether the agency directed us to their website or emailed us their annual budget; how many business days it took to fulfill the request; and if a 30-day extension was used and, if so, what explanation was provided.

### A. An Evaluation of Agency Compliance with the Right-to-Know Law: Statutory Posting Requirements

**Agency Website Review.** The Pennsylvania Right-to-Know Law (Act 2008-3) requires the following information to be posted at each agency and, if the agency maintains a website, on the agency's website: (1) contact information for the agency's open records officer (AORO); (2) contact information for the Office of Open Records (OOR) or other applicable appeals officer; (3) a form which may be used to file a request; and (4) regulations, policies, and procedures for the agency related to the act. We reviewed the websites for each agency in our RTKL sample to assess if the agency was in compliance with these statutory posting requirements.

As shown in Table 13, 70 percent of the state and local government agencies in our RTKL request sample 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 RTKL information. However, we found significant variation in RTKL compliance depending on the type of agency. For example, although most of

the Commonwealth agencies in our sample posted most, if not all, of the required information, the majority of the public charter schools did not post any information.

Table 13

<b>Agencies in Compliance With Statutory Posting Requirements*</b>				
<b>Agency Type</b>	<b>Sample Size</b>	<b>Fully Compliant</b>	<b>Partially Compliant</b>	<b>No RTKL Info Posted</b>
Public Charter School .....	100	12%	28%	60%
Township Government....	100	13	30	57
City Government .....	50	14	42	44
Borough Government.....	100	15	28	57
Legislative Agency .....	10	20	60	20
County Government .....	50	38	32	30
Public School District .....	100	50	42	8
Community College.....	14	64	36	0
PASSHE University .....	14	71	29	0
Commonwealth Agency ..	50	80	16	4
<b>All Agencies.....</b>	<b>588</b>	<b>30%</b>	<b>32%</b>	<b>38%</b>

\* Under Section 504(b) of the Pennsylvania Right-to-Know Law (Act 2008-3), the following information is required to be posted at each agency and, if the agency maintains a website, on the agency's website: (1) contact information for the agency's open records officer (AORO); (2) contact information for the Office of Open Records or other applicable appeals officer; (3) a form which may be used to file a request; and (4) regulations, policies, and procedures of the agency related to this act.

Source: Developed by LB&FC from our RTKL request sample.

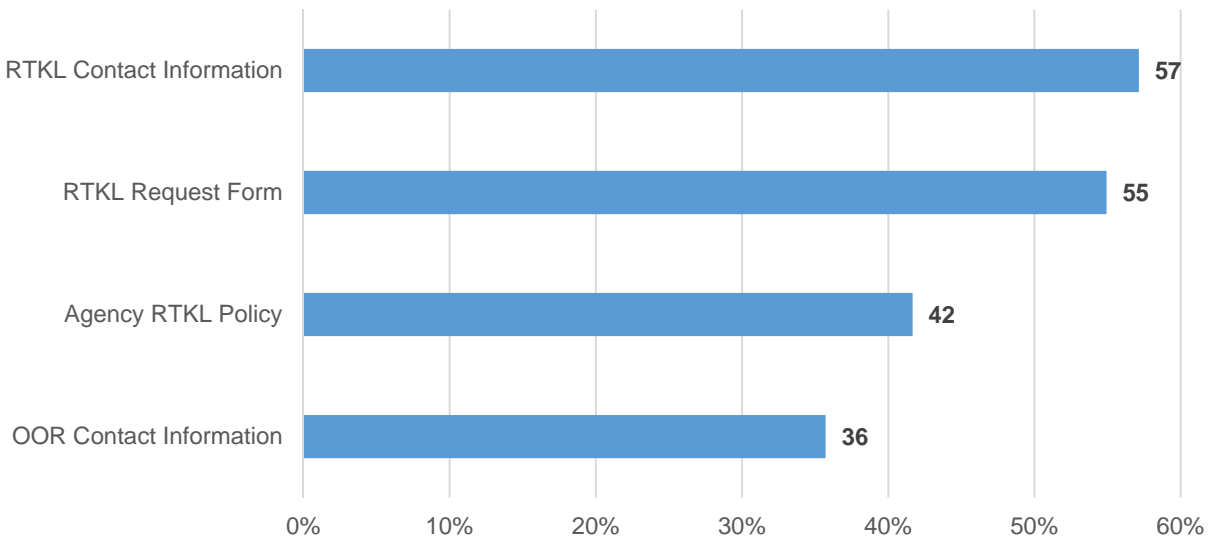
Additionally, although more than half of the agencies in our sample did post the required AORO contact information and an RTKL request form on their website, almost two-thirds of the agencies failed to provide the contact information for the OOR and did not post regulations, policies, and procedures pertaining to the RTKL. See Exhibit 17.

Exhibit 17

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**Percentage of Agencies in Compliance With Each Statutory Posting Requirement\***



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\* Under Section 504(b) of the Pennsylvania Right-to-Know Law (Act 2008-3), the following information is required to be posted at each agency and, if the agency maintains a website, on the agency's website: (1) contact information for the agency's open records officer (AORO); (2) contact information for the Office of Open Records or other applicable appeals officer; (3) a form which may be used to file a request; and (4) regulations, policies, and procedures of the agency related to this act.

Source: Developed by LB&FC from our RTKL request sample.

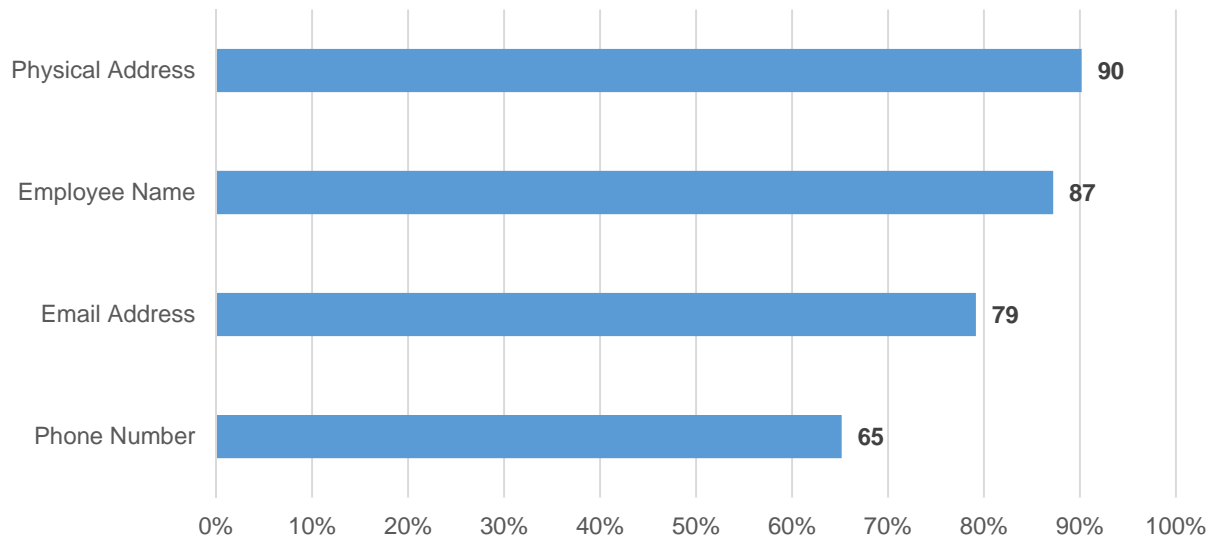
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Although not required by law, we also documented if the information was easily located on the agency's website and what AORO contact information was provided: employee name, telephone number, physical address, and/or email address. We determined that less than half of the sampled agencies had any of the RTKL information posted in an easily accessible location on their website, and about a quarter of the agencies provided complete AORO contact information.<sup>1</sup> As shown in Exhibit 18, most of the agencies that did post the required contact information provided the name, physical address, and email address for the agency's AORO, however, only two-thirds provided a telephone number. This could make an RTKL request for simple and routine information more burdensome than it needs to be, for both the requester and the agency. A formal written RTKL request requires an agency to send at least one formal written response. In comparison, the agency could respond to a telephone request for a public record by just sending the requested documents to the requester or by directing them to the agency's website if the documents are already posted.

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<sup>1</sup> The RTKL information was deemed easily accessible if the information could be accessed from the home page or one of the website's tabs, such as "Contact" or "About Us." If we had to locate the information using Google or the website's search bar, it was determined that the information was not easily accessible.

**Type of Contact Information Posted for the Agency’s Open Records Officer\***



\* Under Section 504(b) of the Pennsylvania Right-to-Know Law (Act 2008-3), the following information is required to be posted at each agency and, if the agency maintains a website, on the agency’s website: (1) contact information for the agency’s open records officer (AORO); (2) contact information for the Office of Open Records or other applicable appeals officer; (3) a form which may be used to file a request; and (4) regulations, policies, and procedures of the agency related to this act.

Source: Developed by LB&FC from our RTKL request sample.

Posting RTKL information prominently on an agency’s website enables interested persons to learn about the RTKL; the agency’s specific regulations, policies, and procedures pertaining to the law; and how to make an RTKL request, thereby, increasing government transparency and citizen’s access to public records. Furthermore, making the AORO’s name, telephone number, physical address, and email address readily available provides interested persons with a range of options to meet their specific needs and situations. This would make public records more attainable for the general public and would increase the efficiency of the RTKL process.

**Right-to-Know Law “Portal” for Commonwealth Agencies.** The Office of General Counsel (OGC) is reportedly in the process of establishing a centralized website for Commonwealth executive branch agencies’ RTKL requests. According to OGC officials, the plan is to create a single website for requesters seeking public records from these agencies. The site would be searchable, and the record may be on the website or the requester would be provided a link to the record. For those records not already available in that manner, the requester would complete an RTKL request form that would automatically be sent to the appropriate agency for response. Those requests would be automatically logged and tracked, reducing staff

time. The goal is to automate the process and provide public records in an efficient manner. The centralized website is being developed with existing resources, using the Office of Administration CRM system, and the framework for the site is expected to be completed by June 30, 2018.<sup>2</sup> The launch date for the completed website has yet to be determined.

## **B. An Evaluation of Agency Compliance With the Right-to-Know Law: Agency Responsiveness**

According to several frequent RTKL requesters and numerous associations that advocate for government transparency and access to public records, many agencies incur unnecessary costs because they fail to use processes that utilize technologies that would reduce the time spent responding to RTKL requests, they respond to simple requests in an inefficient and uncooperative manner, and undergo legal costs for unnecessary solicitor reviews and otherwise avoidable RTKL appeals.

Their concerns include agencies that:

- do not post simple and routine public records, such as meeting minutes, contracts, and financial documents on their website;
- ignore or deny RTKL requests for simple public records that are clearly within the purview of the law;
- unnecessarily require the formal RTKL process for simple requests;
- automatically use a 30-day extension even for simple requests that can be quickly fulfilled; and/or
- send most, if not all, of their RTKL requests to their solicitor for review even though many requests require no redaction and are clearly within the purview of the law.

***The RTKL Request Process.*** The Pennsylvania Right-to-Know Law (Act 2008-3) specifies that agencies may fulfill verbal, written, or anonymous RTKL requests for access to public records in the medium in which it exists, and an agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means, such as their website. Additionally, an employee of an agency is directed to forward requests for records to the agency's open records officer.

Upon receipt of a written request for access to a record, an agency is required to make a good faith effort to determine if the record requested is a public, legislative, or financial record, and to respond as promptly as possible under the circumstances existing at the time of the request. If an agency fails to respond within five

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<sup>2</sup> The plan has two stages: Stage 1 is the automation of the intake and request process; and Stage 2 is the identification of the location of agency records and customization for each agency.

business days, the request is deemed denied. However, as shown in Exhibit 19, an agency may extend the initial five business day response time by up to an additional 30 calendar days under certain conditions specified in the RTKL.<sup>3</sup>

Exhibit 19

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**Right-to-Know Law Determinations to Authorize a 30-Day Extension**

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<b>65 P.S. § 902</b>
(a) <b>Determination.</b> - Upon receipt of a written request for access, the open records officer of an agency shall determine if one of the following applies:
(1) the request for access requires redaction of a record in accordance with section 706;
(2) the request for access requires the retrieval of a record in a remote location;
(3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
(4) a legal review is necessary to determine whether the record is a record subject to access under this act;
(5) the requester has not complied with the agency's policies regarding access to records;
(6) the requester refuses to pay applicable fees authorized by this act; or
(7) the extent or nature of the request precludes a response within the required time period.
(b) <b>Notice.</b>
(1) Upon a determination that one of the factors listed in subsection (a) applies, the open-records officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a).
(2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice.
(3) If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

Source: Right-to-Know Law, 65 P.S. §902.

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Although an agency is not required to accept a verbal request for access to public records, accepting verbal requests for simple and routine public information may be more efficient and, therefore, less costly than requiring a formal written request that requires an agency to draft at least one formal written response. Fulfilling an RTKL request electronically is often more efficient than making duplicates and mailing them to the requester. As shown in Exhibit 20, Signature Information Solutions (SIS) conducted a 2016-2017 study that found that mailing a response to an RTKL request for a 100 page document is estimated to take 16 minutes longer than emailing an attachment. Furthermore, when an agency fulfills a request electronically, that information can easily be posted on their website to respond to future requests for that information. Lastly, although agencies are able to charge at-cost copying and postage fees, simple requests typically involve few pages and, therefore, the time spent notifying, receiving, and processing the payment may nullify any savings for the agency.<sup>4</sup>

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<sup>3</sup> In *APSCUF v. PASSHE*, 142 A.3d 1023 (Pa. Cmwlth. 2016), Court held that the OOR can extend 30-day extension on its own authority but did not cite a specific section of the statute.

<sup>4</sup> For this reason, many agencies waive small fees.

**SIS Study: Steps in the RTKL Request Process (Min.) Per 100 Page Document**

Description	Mail	Email Scan	Email Attachment	Notes
Receive/Review Request.	3	3	3	Open mail, review request, and determine next step.
Verify Public Record .....	2	2	2	Either you know or you will email someone and wait.
Obtain Document .....	5	5	1	Pull from physical file or navigate to image file.
Copy/Scan Document .....	2	2	N/A	Copy or scan at 55 PPM.
Prepare Response Letter.	5	2	2	Type form letter or paste in email.
Invoice .....	2	1	1	Either form letter or mention in email.
Assemble Response .....	4	2	1	Response/requested Doc./Invoice bundled.
Shipping and Handling .....	3	N/A	N/A	Envelope stuffed/labeled and Postage.
Deliver .....	1	1	1	Mail or hit send on an email message.
<b>Total Time Spent .....</b>	<b>27</b>	<b>18</b>	<b>11</b>	

Source: LB&FC review of Signature Information Solutions' time motion estimates.

To determine whether agencies were responding to simple requests in a timely and cost efficient manner, we anonymously contacted the agencies in our RTKL request sample and requested their FY 2016-17 annual budget be emailed to a personal email address in any electronic format that they would prefer.<sup>5</sup> If we were unable to reach an employee at an agency, we left a detailed voicemail requesting access to the public record and provided a name, telephone number, and email address. We requested each agency's annual budget for their previous fiscal year because we determined that the documents would be uniformly applicable to all agencies in the sample; would be broadly recognized as a public record under the RTKL; would not require any redaction or solicitor review; would generally be created and stored electronically; would commonly be posted on agencies' websites; and would be readily available and, therefore, easily and quickly fulfilled.

The most time and cost efficient approach would be for an agency to accept our informal request and verbally direct us to the annual budget posted on their official website. An agency could, however, require a formal written request to be submitted and respond within the required five business days by emailing us the agency's annual budget. Although a formal written request would require additional staff time from an agency and, therefore, the agency would incur additional costs, it would meet the statutory requirements of the RTKL. In general, a 30-day extension should not be necessary for our request, and we saw no reason why any of our requests should be ignored or denied.

**Agency Response.** As shown in Table 14, although the majority of our RTKL requests were fulfilled by the statutory deadline, a substantial number of our requests were deemed denied. Of the 588 state and local government agencies in

<sup>5</sup> We electronically submitted a formal written request using the standard OOR RTKL request form if an agency required us to.

our sample, 345 of our RTKL requests (59 percent) were fulfilled by the statutory deadline<sup>6</sup> with the remaining 243 requests (41 percent) deemed denied.<sup>7</sup> These results are relatively similar to a survey coordinated by the Associated Press in May 2017, wherein about two-thirds of Pennsylvania state and local agencies provided a response to their RTKL request within five business days.<sup>8</sup>

Our survey, however, found significant variation in the agency’s responsiveness dependent on the type of agency. For example, although 77 to 80 percent of the legislative agencies, county governments, and public school districts, and over 60 percent of municipalities fulfilled our request by the statutory deadline, only 36 percent of the requests made to PASSHE universities and 25 percent of the requests made to public charter schools successfully fulfilled our request. Several of these results by agency type are similar to the findings of the SIS study, wherein 66 percent of municipalities and roughly 85 percent of public school districts fulfilled their RTKL request within the statutory deadline.

Table 14

**Agency Response by Percentage: Fulfilled Versus Deemed Denied**

Agency Type	Agencies Called	Fulfilled by Statutory Deadline <sup>a</sup>	Deemed Denied
Legislative Agency .....	10	80%	20%
County Government .....	50	80	20
Public School District .....	100	77	23
City Government .....	50	66	34
Commonwealth Agency .	50	64	36
Borough Government .....	100	59	41
Township Government ...	100	59	41
Community College .....	14	50	50
PASSHE University .....	14	36	64
Public Charter School ....	100	25	75
<b>All Agencies .....</b>	<b>588</b>	<b>59%</b>	<b>41%</b>

<sup>a</sup> Agencies are required by statute to respond to RTKL requests within five business days unless a determination is made that justifies an additional extension of up to 30 calendar days.

Source: Developed by LB&FC from our RTKL request sample.

**RTKL Requests Deemed Denied.** As shown in Table 15, almost 93 percent of the 243 RTKL requests were deemed denied because the agencies never provided a

<sup>6</sup> RTKL requests that were fulfilled by the statutory deadline include both informal and formal RTKL requests that were fulfilled within five business days from when the initial request was made. Another 30 calendar days was permitted if an agency used the 30-day extension.

<sup>7</sup> RTKL requests that were deemed denied include agencies that refused or never responded to our RTKL request, or fulfilled our request but exceeded the statutory deadline.

<sup>8</sup> Twenty-one Pennsylvania newspapers contacted 526 Pennsylvania agencies to request access to the agency’s legal bills related to the RTKL and/or severance agreements. These types of RTKL requests are more complex than a request for an annual budget and would likely require redaction. Scolforo, Mark. *Public records: Survey shows compliance with Pa.’s Right-to-Know Law remains consistent.* Penn Live, 2017. Web. 9 January 2018.



response to our request (this includes 18 agencies that required us to submit a formal written request). Four boroughs and eight charter schools refused to fulfill our request because we would not specify who we were calling for, why we wanted it, and/or what exactly we were looking for in their annual budget. Many of them were confrontational in their approach, and three of the charter schools immediately terminated the call. Although we did not appeal the RTKL requests that were deemed denied, these findings support the claims that some agencies may undergo legal costs responding to otherwise avoidable RTKL appeals.

Table 15

Agency Type	RTKL Requests Deemed Denied					Total Requests Deemed Denied
	Fulfilled but Exceeded Statutory Deadline <sup>a</sup>	Verbal Request With No Response <sup>b</sup>	Formal Request With No Response	Verbally Denied Request	Formally Denied Request	
Legislative Agency .....	0	1	1	0	0	2
County Government .....	0	8	2	0	0	10
Public School District .....	0	22	1	0	0	23
City Government .....	0	15	1	0	1	17
Commonwealth Agency ....	0	17	1	0	0	18
Borough Government .....	1	32	4	4	0	41
Township Government .....	2	36	3	0	0	41
Community College .....	0	7	0	0	0	7
PASSHE University .....	1	7	1	0	0	9
Public Charter School .....	1	62	4	8	0	75
<b>All Agencies .....</b>	<b>5</b>	<b>207</b>	<b>18</b>	<b>12</b>	<b>1</b>	<b>243</b>

<sup>a</sup> Agencies are required by statute to respond to RTKL requests within five business days unless a determination is made that justifies an additional extension of up to 30 calendar days.

<sup>b</sup> The 207 verbal requests with no response includes 51 RTKL requests made directly with an employee of the agency over the phone and 157 requests made by leaving a detailed message on an employee’s voicemail.

Source: Developed by LB&FC from our RTKL request sample.

Only one agency in our RTKL request sample, a city government, formally denied our RTKL request with a written letter of denial. When we initially contacted the city, an employee directed us to submit a formal written request and provided us with an email address to send it to. We emailed a completed RTKL request form with the subject line “Right to Know Request” with our anonymous contact information to the city. The following day, the city’s solicitor contacted us by telephone to inform us that the city does not maintain their annual budget electronically, although he did acknowledge that the city used software, such as QuickBooks, to formulate their budget. At that point the solicitor terminated the call and emailed us a formal written letter of denial to inform us that we improperly submitted our request because it was not addressed to the city’s AORO, that they do not

maintain the records electronically, and they do not supply responses to RTKL requests by email. Our attempt to follow up with the solicitor went unanswered.<sup>9</sup>

**RTKL Requests Fulfilled by Statutory Deadline.** A large number of the agencies that fulfilled our RTKL request accepted our verbal request. As shown in Table 16, over two-thirds of the 345 RTKL requests fulfilled by the statutory deadline were from agencies that accepted our verbal request, though, there was a similar trend in the variation by agency type. In particular, the same types of agencies that frequently required a formal written request, such as public charter schools, community colleges, and PASSHE universities, also had the largest percentage of RTKL requests that were deemed denied.

Table 16

<b>Agency Response by Percentage: Informal Accepted Versus Formal Required</b>			
<b>Agency Type</b>	<b>Fulfilled by Statutory Deadline<sup>a</sup></b>	<b>Informal Request Accepted</b>	<b>Formal Request Required</b>
Legislative Agency .....	8	100%	0%
Commonwealth Agency	32	91	9
County Government .....	40	88	13
City Government .....	33	85	15
Public School District ...	77	73	27
Township Government .	59	61	39
Borough Government...	59	53	47
PASSHE University .....	5	40	60
Public Charter School ..	25	32	68
Community College .....	7	29	71
<b>All Agencies .....</b>	<b>345</b>	<b>68%</b>	<b>32%</b>

<sup>a</sup> Agencies are required by statute to respond to RTKL requests within five business days unless a determination is made that justifies an additional extension of up to 30 calendar days.

Source: Developed by LB&FC from our RTKL request sample.

We also reviewed the websites for each agency in our RTKL request sample to see if the agencies proactively posted their FY 2016-17 annual budget and then documented how many agencies directed us to their website for our RTKL request. We found that only 33 percent of the agencies in our sample had their previous year’s annual budget posted, although the percentage varies significantly among the different types of agencies. For example, 70 percent of all county governments in the sample posted their annual budget on their website compared to 11 percent of the public charter schools.

<sup>9</sup> We did not pursue appeals for the RTKL requests deemed denied to avoid tying up the appeals process and imposing costs on the agencies.

As shown in Table 17, the same types of agencies that had a high percentage of agencies with their annual budget posted, also had a high percentage of agencies that directed us to their website in response to our RTKL request. As a result, those agencies spent very little time fulfilling our request, therefore, incurring little to no additional cost. On the other hand, public charter schools had the lowest percentage of agencies that posted their annual budget, and therefore most of the agencies that responded had to spend additional labor time to locate and email us their budget. Despite all legislative agencies having their annual budgets and/or appropriations automatically posted on budget.pa.gov, all eight agencies that fulfilled our RTKL request by the statutory deadline did so by email. Nevertheless, all of the legislative agencies fulfilled our request on the same day.

Table 17

**Agency Response by Percentage: Directed to Website Versus Emailed Budget**

Agency Type	Fulfilled by Statutory Deadline <sup>a</sup>	Directed to Website	Emailed Annual Budget
Commonwealth Agency .....	32	84%	16%
County Government .....	40	68	33
City Government .....	33	64	36
Public School District .....	77	48	52
PASSHE University .....	5	40	60
Legislative Agency .....	8	38	63
Community College .....	7	29	71
Borough Government .....	59	25	75
Township Government .....	59	19	81
Public Charter School .....	25	16	84
<b>All Agencies .....</b>	<b>345</b>	<b>43%</b>	<b>57%</b>

<sup>a</sup> Agencies are required by statute to respond to RTKL requests within five business days unless a determination is made that justifies an additional extension of up to 30 calendar days.

Source: Developed by LB&FC from our RTKL request sample.

Following a reoccurring pattern, we found that the same type of agencies that typically accepted our verbal requests and posted their annual budget on their website—legislative and Commonwealth agencies, and city and county governments—had the highest percentage of RTKL requests fulfilled by the statutory deadline. These agencies were frequently able to fulfill our requests on the same day, often immediately, with little to no additional cost. On the other hand, the same types of agencies that frequently required a formal written request and did not proactively post or direct us to their website—public charter schools, community colleges, and PASSHE universities—also had the largest percentage of RTKL requests deemed denied and required the most time to fulfill our requests. See Table 18.

Table 18

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**Time Required to Fulfill Our RTKL Request**


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<b>Agency Type</b>	<b>Fulfilled by Statutory Deadline<sup>a</sup></b>	<b>Fulfilled Same Day</b>	<b>Fulfilled Next Day</b>	<b>Fulfilled 2+ Days</b>
Legislative Agency .....	8	100%	0%	0%
City Government .....	33	91	3	6
County Government .....	40	90	5	5
Commonwealth Agency .	32	81	6	13
Public School District .....	77	73	9	18
Borough Government .....	59	63	15	22
Township Government ...	59	61	8	31
Public Charter School ....	25	36	20	44
Community College .....	7	29	14	57
PASSHE University .....	5	20	20	60
<b>Total .....</b>	<b>345</b>	<b>70%</b>	<b>10%</b>	<b>21%</b>

<sup>a</sup> Agencies are required by statute to respond to RTKL requests within five business days unless a determination is made that justifies an additional extension of up to 30 calendar days.

Source: Developed by LB&FC from our RTKL request sample.

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### **C. Some Agencies Automatically Use 30-Day Extensions and Send Most, If Not All, of Their Right-to-Know Law Requests to a Solicitor for Review**

Reportedly, some agencies automatically use 30-day extensions, regardless of how time-consuming or voluminous an RTKL request may be. Although many agencies assert that the extensions are necessary due to bona fide staffing limitations, the need for extensive redactions, legal reviews, or other statutorily applicable reasons, requesters and their representative associations have reported numerous agencies automatically using the 30-day extension even for simple and routine requests. Furthermore, some have reported agencies using the extension to deter, or even punish, requesters. Our findings offer some support for these concerns, though, it's possible that these actions may be limited to a relatively small number of agencies.

We found that some agencies automatically use 30-day extensions for most, if not all, of their RTKL requests. Several agencies have reported that it is not necessarily how time-consuming or voluminous an RTKL request may be that determines if a 30-day extension will be used. Instead, it often comes down to the AORO and/or solicitor being too busy with other duties and responsibilities. Moreover, numerous agencies have also reported to us that these other tasks are considered their primary duties and, consequently, providing access to public records is considered secondary. In some cases, agency personnel consider the RTKL an unfunded mandate and, therefore, do not consider the RTKL part of their job responsibilities.

Additionally, we found that at least one agency acknowledges using the 30-day extension to deter RTKL requests. While administering our CY 2016 specific survey, an AORO from a municipality contacted our office and told us that his local agency used to receive a large number of RTKL requests. However, he figured out that if he used a 30-day extension for all of the RTKL requests he received, and then simply ignored those requests without ever fulfilling them, the requesters would almost always go away without filing an appeal.

The use of 30-day extensions by some agencies regardless of the type of requests being submitted, however, appears to be a limited practice. For example, only four of the 588 state and local government agencies in our RTKL request sample used an extension, though, one of those agencies never fulfilled our request, and another 242 requests were deemed denied.

Of the four agencies that used a 30-day extension, two provided an appropriate reason by citing Section 902(a)(3): a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations. See Exhibit 21. Both provided a specified staffing limitation as required, with one citing no full-time staff and the other explaining that their AORO was on vacation. Another agency cited Section 902(a)(7): the extent or nature of the request precludes a response within the required time period, but did not provide an explanation. Regardless, we consider this unlikely since 274 of the local and state agencies in our RTKL request sample were able to fulfill the same request in less than a day. Finally, another agency listed the same determinations for an extension as the other three (Section 902(a)(3), (7)), but the AORO did not provide any explanations for the determinations and explained that our request was under legal review to determine whether Section 902(a) (1), (2), (4), and (5) also applied. An RTKL request for an agency's annual budget for their previous fiscal year would not appear to meet any of these determinations, with the exception of a bona fide staffing limitation.

**CY 2016 Specific Survey: 30-Day Extensions.** We asked the survey respondents to our CY 2016 specific survey how many of the RTKL requests they fulfilled required a 30-day extension. In response, 1,072 agencies reported using the 30-day extension for nearly 29 percent of all the RTKL requests fulfilled during CY 2016. Yet, similar to other findings in our report, the percentage of 30-day extensions varies greatly among the different types of agencies, with city governments, including Philadelphia, reporting that their agencies use the 30-day extension for most, if not all, of their RTKL requests while judicial districts, legislative agencies, police departments, and conservation districts rarely do. See Exhibit 22.

Exhibit 21

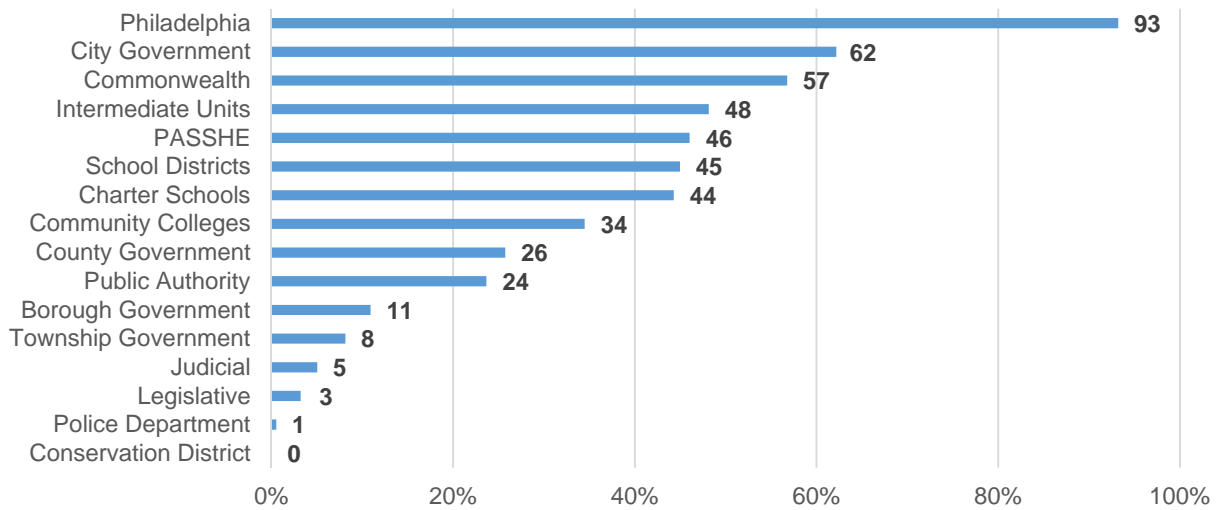
**RTKL 30-Day Extension Determinations Used in Response to LB&FC Requests**

Agency Type	65 P.S. Section 902(a) Determination: 30-Day Extension
Borough Government	(3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations. <ul style="list-style-type: none"> <li>No full-time staff.</li> </ul>
Township Government	(3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations. <ul style="list-style-type: none"> <li>AORO was on vacation.</li> </ul>
Commonwealth Agency	(7) the extent or nature of the request precludes a response within the required time period. <ul style="list-style-type: none"> <li>No explanation provided.</li> </ul>
Public Charter School	(3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations. <ul style="list-style-type: none"> <li>No explanation provided.</li> </ul>
	(7) the extent or nature of the request precludes a response within the required time period. <ul style="list-style-type: none"> <li>No explanation provided.</li> </ul>
	<b>Your request is under legal review to determine whether:</b>
	(1) the request for access requires redaction of a record in accordance with section 706;
	(2) the request for access requires the retrieval of a record in a remote location;
	(4) a legal review is necessary to determine whether the record is a record subject to access under this act; and/or
(5) the requester has not complied with the agency's policies regarding access to records.	

Source: Developed by LB&FC from our RTKL request sample.

Exhibit 22

**Percentage of RTKL Requests Fulfilled That Used a 30-Day Extension\***



\* As identified by 1,072 respondents to our CY 2016 specific survey.

Source: Developed by LB&FC from our CY 2016 specific survey.

However, many of the agency types that report using a large percentage of 30-day extensions also reported being able to fulfill the majority of their RTKL requests relatively quickly. For example, in Chapter IV of this report, city governments reported being able to fulfill 50 percent of their RTKL requests in less than an hour, and another 37 percent within one to three hours. This further supports the claims that agencies use the 30-day extension regardless of how time-consuming or voluminous an RTKL request may be. Though, it's possible that one of the reasons for the large number of 30-day extensions is the number of RTKL requests sent to a solicitor for review.

**CY 2016 Specific Survey: Solicitor Reviews.** Several state and local government agencies have informed us that it is their policy to send all RTKL requests to their solicitor for review, regardless of how simple a request may be. Several other agencies have indicated that exceptions are made for simple and routine requests, but all others are reviewed by their solicitor. Other agencies have stated that they only send complicated requests, which often require redaction, to their solicitors.

For that reason, we asked the respondents to our CY 2016 specific survey, how many of the RTKL requests they fulfilled required a solicitor review, and found that 34 percent were sent for legal review. Repeating a similar trend throughout our report, the percentage of RTKL requests sent to a solicitor for review varies significantly dependent on the type of agency. See Exhibit 23. It is important to note that some agencies appoint their solicitor as their AORO, and as a result, all RTKL requests received are reported as being reviewed by a solicitor. For example, Philadelphia's law department handles all formal written RTKL requests. The heavy use of solicitors to review simple and routine RTKL requests is likely a key factor in the high costs some agencies have reported complying with the RTKL.

Some agencies do incur substantial legal fees by sending RTKL requests to a solicitor for review, however, larger agencies often appoint their attorney as their AORO. As a result, these agencies may not incur any additional costs for the RTKL requests reviewed by a solicitor. Nevertheless, it is likely that not all of the RTKL requests actually required a legal review and, therefore, agencies may have incurred unnecessary legal costs.

Exhibit 23

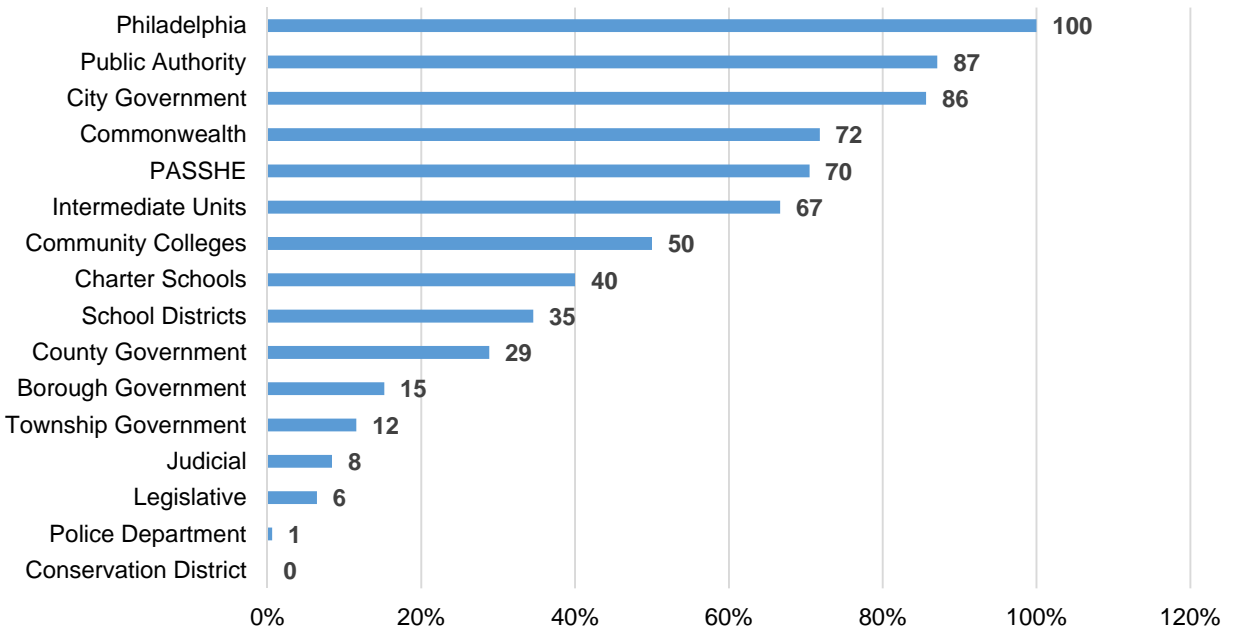
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**Percentage of RTKL Requests Sent to a Solicitor for Review\*, \*\***

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\* As identified by 1,072 respondents to our CY 2016 specific survey.

\*\* Some agencies appoint their solicitor as their AORO and, as a result, all RTKL requests received are reported as being reviewed by a solicitor.

Source: Developed by LB&FC from our CY 2016 specific survey.

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## VIII. Additional Training Is Needed to Improve the Efficiency of the Right-to-Know Law Request Process

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Although the majority of the agencies we contacted were aware of the requirements of the Right-to-Know Law (RTKL) and responded to our RTKL request by the statutory deadline, we found that some of the agencies and/or their Agency Open Records Officers (AOROs) were unfamiliar with the requirements of the law. Although the RTKL does not specifically require AOROs to participate in the training sessions offered by the OOR, the lack of training may result in some agencies responding to RTKL requests in an inefficient manner, and may result in unnecessary solicitor reviews and otherwise avoidable appeals.

**Right-to-Know Law Training Requirements.** The Pennsylvania Right-to-Know Law (Act 2008-3) requires the Office of Open Records (OOR) to provide annual training courses to agencies, public officials, and public employees on both the Right-to-Know Law (RTKL) and the Sunshine Act. The office is also required to provide annual, regional training courses to local agencies, public officials, and public employees. As shown in Table 19, the OOR held over 130 training sessions throughout the state in its first year, though the number of courses held each year has decreased significantly since that time. On the other hand, the number of attendees, as reported in the OOR Annual Reports, has increased from 1,500 in 2015 to 3,000 in 2016.

Table 19

The Total Number of OOR Training Sessions Held Each Year								
	2009	2010	2011	2012	2013	2014	2015	2016
Sessions	134	41	9	14	10	35	54	70

Source: OOR Annual Reports and OOR staff.

**Current OOR RTKL Training Program.** To date, the training courses provided by the OOR have been primarily through on-site presentations when requested to do so, however, the OOR Executive Director has indicated that the office has had difficulty meeting the demand for training. This has also required travel by both the OOR trainer as well as, to some extent, by the attendees, and therefore, it is likely that some agencies have not attended the training sessions due to time and staffing limitations. For this reason, the OOR will soon begin to use webinars and has started producing online videos as part of their training program. For example, the OOR held an annual training session on October 23, 2017, which had approximately 275 attendees (41 on-site and 234 online), representing approximately 260 organizations. According to the OOR Executive Director, the office will be relocating to a facility in February 2018 that will allow for additional webinars and online videos, as well as on-site training activities.

The OOR also maintains a website that includes links to RTKL training materials and videos (also uploaded to YouTube), a Citizens' Guide to the RTKL, agency guides to the RTKL by agency type, and advisory opinions. The website also has a training request form for groups seeking training on the RTKL, and individuals may sign up for email subscriptions of the daily Final Determinations Updates and the Newsletter, an occasional newsletter about issues related to the RTKL, the Sunshine Act, and government transparency. The Office, however, does not currently proactively email AOROs to provide regular and ongoing training through webinars and other training materials, and/or to provide updates and reminders pertaining to the RTKL.

Although the RTKL requires the OOR to post the name and address of all AOROs in Pennsylvania on their website, there is no requirement that agencies provide and/or update their AORO's complete contact information (name, telephone number, email address, and physical address). As a result, we found that the AORO contact list maintained by the OOR is incomplete and outdated. For example, of the 3,844 AOROs listed by the OOR, 37 percent did not provide a name, 23 percent did not provide a telephone number, and roughly half either had no email address listed or the email address was found to be incorrect and/or outdated.

Senate Bill 2017-465 would require an agency to register its AORO with the OOR "in a manner prescribed" by the OOR, and, according to the OOR Executive Director, the OOR is planning to develop a more accurate AORO list through coordination with the Department of Community and Economic Development's (DCED) Municipal Statistics Office, which collects data from municipalities through required filings with DCED. The OOR Executive Director indicated that they will then proactively email training materials, including short videos and updates, to all AOROs on an ongoing basis.

***Proposed OOR Regulations.*** The OOR is also in the process of promulgating regulations to administer their provisions of the law. A draft of the regulations is posted on the agency website and includes the following:

- a requirement for AOROs to register annually with the OOR;
- the development of an OOR RTKL form that will require a requester to certify whether they are a commercial requester;
- a specific provision that the OOR may establish a separate fee schedule for commercial requesters;
- procedures for appeals before the OOR;
- procedures for mediations; and
- procedures for conducting in camera reviews.

The OOR plans on publishing the Advance Notice of Proposed Rulemaking by April 2018.

## **IX. Appendices**

# APPENDIX A

PRIOR PRINTER'S NO. 187

PRINTER'S NO. 425

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE RESOLUTION

No. 50 Session of  
2017

INTRODUCED BY HARPER, FREEMAN, FARRY, MURT, JAMES, READSHAW,  
BAKER, D. COSTA, WATSON, SCHLOSSBERG, NEILSON, MILLARD,  
GILLEN, B. MILLER AND PICKETT, JANUARY 31, 2017

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF  
REPRESENTATIVES, AS AMENDED, FEBRUARY 8, 2017

### A RESOLUTION

Directing the Legislative Budget and Finance Committee to  
conduct a comprehensive review of the fiscal impact on  
Commonwealth agencies and local governmental agencies for  
implementation of the Right-to-Know Law and to make  
recommendations.

WHEREAS, The General Assembly enacted the act of February 14,  
2008 (P.L.6, No.3), known as the Right-to-Know Law; and

WHEREAS, The Right-to-Know Law dramatically expanded  
citizens' access to public records, financial records, judicial  
records and legislative records across this Commonwealth; and

WHEREAS, The Right-to-Know Law requires State and local  
agencies, the Senate, the House of Representatives and the  
Judiciary to appoint:

- (1) Open records officers who are responsible for  
thoroughly reviewing and completely responding to Right-to-

## Appendix A (Continued)

Know Law requests in a timely manner.

(2) Appeals officers who must conduct administrative appeals to review decisions made by the open records officer; and

WHEREAS, The Right-to-Know Law is credited by many for making the operation of State and local government more transparent; and

WHEREAS, It is believed that this new transparency in government has had a dramatic fiscal impact on agencies, particularly local government agencies, that must dedicate scarce resources to the following tasks:

(1) Reviewing Right-to-Know Law requests and collecting records responsive to the requests.

(2) Redacting sensitive or privileged information from the records.

(3) Reproducing the records.

(4) Responding to Right-to-Know Law requests;

and

WHEREAS, The Right-to-Know Law prohibits an agency from adopting a policy or regulation to place a limitation on the number of records which may be requested or requiring a requester to disclose the purpose or motive in requesting access to records; and

WHEREAS, Agencies are prohibited from assessing administrative costs for an agency's review of records

## Appendix A (Continued)

requested, the search for or retrieval of documents or the staff time or salaries for employees whose duty assignments are limited due to compliance with the Right-to-Know Law; and

WHEREAS, The Right-to-Know Law requires agencies to respond to requests within five days of the date that the request is made and authorizes extensions for responses of 30 days for limited circumstances; and

WHEREAS, In their dissenting opinion, three judges of the Commonwealth Court expressed their concern in *Pennsylvania Gaming Control Board v. Office of Open Records*, 48 A.3d 503, (Pa. Commonwealth 2012) that the court had expanded the law so that "an unaddressed request written on the back of a brown paper bag and given to a Penndot plow driver by the side of the road on a snowy winter night" now must be considered a valid Right-to-Know Law request; and

WHEREAS, Numerous other appellate court decisions reviewing the Right-to-Know Law have expanded the administrative and legal burdens placed on State and local agencies; and

WHEREAS, The Right-to-Know Law limits the ability of State and local agencies to recover from the fiscal impact of the various tasks associated with the Right-to-Know Law requests; therefore be it

RESOLVED, That the Legislative Budget and Finance Committee conduct a comprehensive review relating to the implementation of the Right-to-Know Law and prepare a report of its findings which

## Appendix A (Continued)

shall include all of the following:

(1) Annual costs associated with administration of the Right-to-Know Law for Commonwealth, judicial and legislative agencies.

(2) Annual costs associated with the administration of the Right-to-Know Law for local agencies of various sizes and classification.

(3) Recommendations ~~to the General Assembly~~ on amendments to the Right-to-Know Law which would decrease the administrative burdens of the law on State and local agencies WHILE STILL ENSURING REASONABLE PUBLIC ACCESS TO PUBLIC RECORDS AND INFORMATION.

(4) Recommendations ~~to the General Assembly~~ on amendments to the Right-to-Know Law which may be necessary to offset the costs associated with administration of the Right-to-Know Law for State and local agencies WHILE STILL ENSURING REASONABLE PUBLIC ACCESS TO PUBLIC RECORDS AND INFORMATION;  
and be it further

RESOLVED, That the Legislative Budget and Finance Committee submit a report of its findings to the House of Representatives within one year of the adoption of this resolution.

## APPENDIX B

### Pending Bills Regarding the Right-to-Know Law

- HB 336: Public records, procedure, access exceptions, exempts access to public school district employee home addresses. (Amend 2008 P.L.6, No.3)
- HB 639: Preliminary provisions, defines “commercial purpose” and authorizes fees to be charged for those requests; procedure, written request; judicial review, fee limitations, records to be used for a commercial purpose. (Amend 2008 P.L.6, No.3)
- HB 821: Public records, “personal financial information,” further defined; procedure, exceptions for public records, agency's financial institution account numbers, routing numbers, credit card numbers and account passwords are exempt from access. (Amend 2008 P.L.6, No.3)
- HB 1229: Public records, procedure, exceptions, excludes home addresses. (Amend 2008 P.L.6, No.3)
- HB 1277: Public records, access, requests, redaction, Social Security numbers. (Amend 2008 P.L.6, No.3)
- HB 1295: Public records, “commercial purpose,” defined, procedure, written requests, method of submission; fee limitations, search and review. (Amend 2008 P.L.6, No.3)
- HB 1297: Public records, State-related institutions, reporting, contents of report, copies and posting, contracts. (Amend 2008 P.L.6, No.3)
- HB 1894: An act providing for access to public information and providing for criminal penalty for destruction of requested information. (Amend 2008 P.L.6, No.3)
- SB 168: Public Employer Collective Bargaining Transparency Act, defining as a public record a proposed collective bargaining agreement made by a public employer or received by a public employer from an employee organization and any documents that are presented by a public employer or received by a public employer from an employee organization in the course of collective bargaining. Subject to the Right-to-Know Law.
- SB 187: Defines “commercial purpose” and establishes fees for those requests.
- SB 380: Includes birth date as personal identification information exempted from disclosure under the law.



## Appendix B (Continued)

- SB 465: Further providing for definitions; in requirements and prohibitions, providing for Pennsylvania Interscholastic Athletic Association; in access, further providing for open-records officer, for requests and for retention of records and providing for in-mate access; in procedure, further providing for access, for requests, for written requests, for production of certain records and for exceptions for public records; in agency response, further providing for general rule and for extension of time; in appeal of agency determination, further providing for filing of appeal and for appeals of officers; in judicial review, further providing for Commonwealth agencies, legislative agencies and judicial agencies, for civil penalty, for fee limitations and for Office of Open Records; and, in miscellaneous provisions, further providing for relation to other laws.
- SB 466: University personnel, state-related institutions, disclosing salaries. (Amend 2008 P.L.6, No.3)
- SB 504: Clarifies which labor relations records are included as exceptions to the Right-to-Know Law.



## APPENDIX C

### **Response to This Report**



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://openrecordspa.wordpress.com/2018/01/04/first-ever-survey-of-aoros/>

<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  
Executive Director  
[earneson@pa.gov](mailto:earneson@pa.gov)