House Intergovernmental Affairs & Operations Committee
Informational Meeting on the Right-to-Know Law

Monday, March 23, 2026
9:30 AM – 11:00 AM
60 East Wing

9:30 AM – 9:35 AM	Call to Order Opening Remarks
9:35 AM – 9:55 AM	**Panel 1** Liz Wagenseller Executive Director Pennsylvania Office of Open Records
9:55 AM – 10:25 AM	**Panel 2** Ray D'Agostino Lancaster County Commissioner County Commissioners Association of Pennsylvania Ronald Grutza Senior Director of Government Affairs Pennsylvania State Association of Boroughs
10:25 AM – 10:55 AM	**Panel 3** Melissa Melewsky Media Counsel Pennsylvania NewsMedia Association Terry Mutchler Chair, Transparency and Public Data Practice Obermayer Rebmann Maxwell & Hippel LLP
10:55 AM – 11:00 AM	Closing Remarks

Pennsylvania
Office of Open Records

House Intergovernmental Affairs and Operations Committee

The Honorable David M. Delloso, Chair

March 23, 2026

Written Testimony of Liz Wagenseller

Executive Director, Office of Open Records

www.openrecords.pa.gov

Thank you for your attention to the important matters surrounding the increasing use of generative artificial intelligence (AI). While the positive potentials for AI seem limitless, its misuse in seeking access to government records in Pennsylvania threatens to derail the entire Right-to-Know Law (RTKL) process. This unfortunate use of AI continues to rapidly gather momentum and is quickly overwhelming one of the leading open government appellate processes in the country. Without intervention, the improper use of AI will likely dramatically transform Pennsylvania's RTKL landscape and result in reduced access to records.

The OOR's Stake: Why the use of AI matters to the OOR

The Office of Open Records (OOR) is a quasi-judicial tribunal that annually issues thousands of legally binding decisions determining whether a local or Commonwealth agency has properly denied access to government records. The requester does not pay any fees, and the legal burden is on the government agency to explain and defend their denial to the OOR. Absent an extension given by the requester, the OOR must issue its decision within 30 calendar days via a decision called a "Final Determination." If the OOR fails to issue a decision within that timeframe, the appeal is automatically denied, and the requester must utilize the courts to access records, a potentially costly and lengthy process.

The impact of AI on appeals to the OOR is profoundly evident in both the quantity and quality of the appeals and legal submissions filed with the OOR. Each poses a different but equally challenging problem.

Quantity: The use of AI is quickly creating an imminently impossible workload for the OOR

The OOR first began hearing about the use of AI in 2024 and observing an impact in 2025. From 2024 to 2025, the number of appeals filed with the OOR increased by 743 appeals from 3,227 to 3,970, an increase of 23 percent. To put this in perspective, that increase is the equivalent workload of three Appeals Officers.

In the last six months, the use of AI has rapidly become widespread. So much so that each month recorded all-time highs for appeals filed in that given month. Comparing the last six months to the same time a year ago, the OOR experienced a 64 percent increase from 1,413 to 2,320 appeals. As of submission of this testimony, the OOR is on pace to again set an all-time high for appeals received within a year with a projected caseload of close to 5,000 appeals, the equivalent workload increase of at least four Appeals Officers. From purely a numbers standpoint, this pace is unsustainable, even to the end of this year.

In addition to a higher quantity of appeals, the appeals submissions and documents filed by the parties themselves contain much more voluminous content. Submissions from some requesters that were only a few pages a few months ago are now dozens of pages and sometimes much longer than that. The overwhelming majority of requesters previously submitted a handful of sentences in their submission; now, the OOR routinely receives lengthy paragraphs of AI-generated legal arguments in favor of granting access to the records.

It appears that requesters simply copy and paste an agency's cited legal reason for denial into an AI chatbot such as ChatGPT and ask for a rebuttal. After the chatbot generates an almost immediate response, the requesters copy and paste those responses into their appeal submission and submit them to the OOR. Many requesters are using the chatbot for legal representation.

For now, the use of AI in appeals and legal submissions is generally easy to identify because the submitted content and format follow the same writing style and language unique to AI. In at least one case, a requester even copied and pasted the AI chatbot prompts into their submission by mistake.

Quality: Many AI submissions are unreliable and inaccurate

The problems caused by the misuses of AI extend beyond mere quantity because the submitted filings are rife with errors, fabricated content, and unsound reasoning. The automation of legal analysis is deficient and currently is unable to replicate and distinguish nuanced human analysis and review. Many AI appeals "hallucinate" by creating legal cases that never existed as well as making up quotes from existing legal cases. In addition, and even more problematic, AI also cites accurate quotes from actual cases that on their face appear to be well suited and applicable to the legal argument, but closer review and analysis reveals they have no relevance to the legal issue at hand.

This puts OOR appeals officers in the position of having to review what the industry has tagged "AI slop" regardless of how unnecessary or riddled with errors the submission might be. This combined with the increasing volume places the OOR in an untenable position.

Solutions: The OOR raises these recommendations as possible solutions to the misuse of AI.

The recent increase in the number and volume of appeals appears to be just the beginning, as it is likely to grow exponentially as individuals become more aware of and adept at using AI. As is the case with many areas impacted by AI, the solutions to this problem are not readily apparent. Increased knowledge of how to navigate and use the RTKL is a necessity for preserving democracy; permitting the copying and pasting of unverified AI slop is not. How do we navigate such a chasm?

This General Assembly generously provided funds for a 20 percent increase in the OOR's complement the past five years. The OOR is extremely grateful for the budget assistance it has received. Those gains

are not keeping pace with the increase in appeals. This leads to the stark reality that continually increasing the number of appeals officers in the OOR is a mathematical approach that does not appear to be a viable solution in the long run, or perhaps even in the short run. Keeping pace with this AI phenomenon would require a much bigger investment; this expensive approach is paired with the growing challenge to find viable candidates for this demanding and niche area of legal government work.

Some critics would suggest a complete prohibition against the use of AI in RTKL requests and appeals. However, with the rapid development and use of AI in practically all software, applications and platforms, such an overbroad approach would be problematic.

The OOR's recommendation is to first develop a specific definition of what is included in the term "artificial intelligence." Second, the OOR recommends that any legal or legislative approach should center on a process to identify and disallow the improper or unverified use of AI as opposed to a difficult-to-enforce broadly worded ban of AI entirely.

With the development and rapid use of AI, the task facing the OOR has become increasingly challenging. While the misuse of AI cannot be used as a justification to avoid accountability, it also cannot be used to overwhelm government agencies.

TESTIMONY ON
RIGHT-TO-KNOW LAW IMPACTS ON COUNTIES
AS LOCAL GOVERNMENT AGENCIES

Presented to the House Intergovernmental Affairs & Operations Committee

By
Commissioner Ray D'Agostino
Chairman, Lancaster County Board of Commissioners

March 23, 2026

Good morning Chairman Delloso, Chairman Staats and members of the House Intergovernmental Affairs & Operations Committee. Thank you for the opportunity to testify today on behalf of the County Commissioners Association of Pennsylvania (CCAP), a non-profit, bipartisan association representing all 67 counties of this Commonwealth.

My name is Ray D'Agostino. I serve as a Lancaster County Commissioner and as Chairman of CCAP's County Governance Committee, which is tasked providing guidance on all public policy matters relative to the governance and operation of counties.

We appreciate the Committee's willingness to examine the Pennsylvania Right-to-Know Law and its impact on local governments. Counties strongly support transparency and accountability, and we recognize the importance of public access to government records in maintaining trust in our institutions. At the same time, after more than fifteen years of implementation, it has become increasingly clear that the law must be updated to reflect how it is being used today and the realities counties face in carrying it out.

The Evolution of the Law

When the General Assembly enacted Act 3 of 2008, it represented a significant and important shift in Pennsylvania's approach to government transparency. By establishing a presumption that records are public unless specifically exempted, and by placing the burden of proof on government agencies, the law expanded access in meaningful ways.

Counties supported those reforms and have worked diligently to implement them. We continue to believe in the principles that underline the law. However, the environment in which the Right-to-Know Law operates today is far different than it was in 2008.

Advances in technology, the digitization of records, and the emergence of data-driven business models have all transformed the nature of requests. As reflected in the 2025 Annual Report of the Pennsylvania Office of Open Records, requests are increasingly complex, frequently involve large volumes of electronic data, and often lead to appeals that require additional time and resources to resolve. Local agencies, including counties, remain at the center of this activity.

What was once primarily a system for accessing discrete public records has, in many cases, evolved into a mechanism for large-scale data extraction and in some cases, as a means to consternate, disrupt or overwhelm local governments. That evolution has significant implications for county governments.

Operational Realities for Counties

Counties manage an extraordinary breadth of records. From elections and courts to human services, public safety, land records, and tax administration, counties serve as custodians of information that is essential to governance and often highly sensitive.

Responding to a Right-to-Know request is not a simple administrative task. It requires coordination across departments, retrieval of records from multiple systems, careful legal review

to determine what may or may not be disclosed, and redaction of confidential information where necessary. All of this must be done within strict statutory timelines.

In many cases, particularly those involving electronic communications or large datasets, the process is time-intensive and technically demanding. A single request can require dozens or even hundreds of hours of staff time. For smaller counties with limited personnel, even a handful of complex requests can significantly disrupt normal operations.

These are not hypothetical concerns. They are daily operational realities that affect how counties allocate staff, manage workloads, and deliver services to the public.

Commercial Use of Public Records

One of the most significant developments in recent years has been the increase in requests made for commercial purposes. Counties are seeing a growing number of requests from businesses seeking access to data that can be repackaged, aggregated, and sold as part of subscription services or other revenue-generating products.

These requests often target information such as property records, tax sale data, contracts, and other datasets that have commercial value, including something that the law did not seem to contemplate, metadata. While this information may be public, the current framework allows it to be obtained at little or no cost, despite the fact that it is collected, maintained, and produced using taxpayer-funded resources.

Counties do not believe the Right-to-Know Law was intended to subsidize private enterprise. The purpose of the law is to promote transparency and accountability in government, not to provide a no-cost data pipeline for commercial use. Without adjustments that reflect these modern demands, the system risks overextending the resources of local government while failing to protect taxpayers.

In order to address companies taking advantage of the Right-to-Know Law system, counties support legislation that would create a fee-based system for commercial requests, ensuring that those requests made to generate revenue are not funded on the backs of taxpayers.

Vexatious and Burdensome Requests

Counties also face increasingly broad and burdensome requests. In some instances, requests appear to be designed not to obtain specific records, but to overwhelm agency resources or to substitute for formal discovery in litigation. Vexatious requests are those made by an individual or entity repeatedly or in mass with an intent to harass or intimidate local governments, often causing disruption and tying up resources. In addition, the requests may have no connection to actual documents or information subject to or need to go through the Right-to-Know process, but the intent is to overwhelm or disrupt operations.

Because requesters are not required to state a purpose, proving that a request is vexatious is difficult, often leaving counties with no option but to comply, regardless of the impact on their

operations. The resulting diversion of staff time and resources can significantly affect a county's ability to perform essential functions and deliver services to residents.

While counties understand that some voluminous requests may be legitimate, counties support legislation that would address these issues, including but not limited to the ability to reject the request with reasonable suspicion of abuse of the law. It is imperative to reiterate that counties believe in transparency of public records, but also have a responsibility to the taxpayers to use tax dollars efficiently and to the benefit of those within their communities.

Another gray area for these requests in recent years are those related to elections. There are documents and information that the Election Code states are either public or not, but is not found in the Right-to-Know law. Clarification as to whether these requests fall under the Right-to-Know law would be helpful. Also, while counties understand the interest in the data being requested, the need for time to be able to administer elections, often while the response clock under the Right-to-Know Law is ticking, is of paramount importance. Counties ask for a blackout period during the time leading up to, during and after elections to ensure counties can focus limited resources on the backbone of our democratic republic instead of responding immediately to requests, many of which are from entities outside of the commonwealth.

Providing agencies with reasonable tools to manage clearly burdensome requests is critical to ensuring that the system remains functional and sustainable.

Corrections Requests

Counties have also experienced ongoing challenges related to requests originating from correctional facilities. While it is important that inmates retain access to records relevant to their cases, inmate requests are more frequently not subject to the Right-To-Know process. Rather, many requests are legal questions or questions related to the correctional facility processes and cannot, nor are they required to be answered under the Right-To-Know Law. Unfortunately, counties must provide written denial of each inmate question. Additionally, counties have encountered situations where requests are excessive, unrelated, or directed at records that do not exist or are not in the county's possession.

These requests still require time and resources to process and respond to, and in some cases, they lead to appeals that further increase the burden on county staff. A framework that balances access for legitimate purposes with protection against misuse is critical to sustaining effective county operations.

Cost Impacts on Taxpayers

At its core, the implementation of the Right-to-Know Law carries real and growing costs. These costs are not abstract; they are borne directly by county and other local governments and, ultimately, by local taxpayers.

Staff time, legal review, technological resources, and administrative overhead all contribute to the cost of compliance. As requests become more complex and more frequent, those costs

continue to rise. The current fee structure does not adequately reflect these realities, particularly for large or technically complex requests. As a result, counties are often required to absorb significant costs without any mechanism for recovery.

Modernizing the cost recoupment framework is essential to ensure that counties can continue to fulfill their obligations under the law while maintaining fiscal responsibility.

Moving Forward

Counties are not seeking to limit transparency. We remain committed to open government and to providing access to public records. We are seeking a modernized framework that reflects modernization and how the law is being used today, while protecting privacy, preventing abuse, and ensuring the responsible use of taxpayer resources.

The issues we have outlined—including commercial use, vexatious requests, inmate requests, and cost recovery—represent real challenges for counties. Addressing these challenges is necessary to ensure the Right-to-Know Law continues to function effectively and sustainably for both the public and local governments. While there are current legislative proposals to address several of these issues, counties look forward to continuing discussions around these issues in the hopes of finding solutions that balance government efficiency and protect transparency.

Conclusion

Counties play a vital role in maintaining the records that document the work of government and the lives of our residents. We take that responsibility seriously, and we are committed to ensuring that those records are accessible in a way that promotes transparency and accountability.

At the same time, we must ensure that the system through which those records are accessed remains workable, balanced, and sustainable. We appreciate the Committee's attention to these issues and stand ready to work with you, the Office of Open Records, and all stakeholders to develop solutions that meet these goals.

Thank you for your time and consideration. I would be happy to answer any questions.

Pennsylvania State Association of Boroughs

Testimony on

Right-to-Know Law

House Intergovernmental Affairs & Operations Committee

March 23, 2026

Ron Grutza
PSAB Senior Director of Government Affairs

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Good morning, Chairman Delloso, Chairman Staats, and members of the House Intergovernmental Affairs & Operations Committee. My name is Ron Grutza and I'm the Senior Director of Government Affairs for the Pennsylvania State Association of Boroughs (PSAB). I'm happy to be with you this morning to discuss the much-needed changes to Pennsylvania's Right-to-Know Law.

The Pennsylvania State Association of Boroughs (PSAB) is a nonprofit, nonpartisan local government association representing the interests of 955 boroughs and the more than 10,000 elected and appointed borough officials. For over 100 years, PSAB has helped to shape the laws that govern boroughs and municipal officials across the state. Our membership is actively engaged in working with the General Assembly on a host of important issues, among which is what brings us here today, Pennsylvania's Right-to-Know Law.

We can all agree that the public has a right to information on how their government operates and spends public, or more specifically, taxpayer dollars. After all, information is the backbone of our democracy. If people do not know what is going on in their communities, they are ill-prepared and less likely to participate in their government. To foster this participation and prompt accountability, Pennsylvania reenacted and expanded our Right-to-Know Law by passing Act 3 of 2008. PSAB agreed with many provisions in Act 3, such as expanded transparency in government.

Enacting such sweeping changes in Pennsylvania's Right-to-Know Law, however, created several unintended consequences. Our borough officials experienced many more hours of administrative burdens due to the new law. Borough officials have encountered requests which are voluminous in nature and take extensive staff time for researching information, retrieving records, and copying documents. In some cases, the administrative costs associated with Right-to-Know Law requests have been staggering. One case regarding true costs for information requested resulted in a $546 total cost to the borough administration while the requester only paid $28 for the documentation. Another extreme example involved a total processing cost of $103 which was acquired by the requester for $1! It is unfortunate that after excessive time and attention is spent on processing requests, several of our members report that requesters decide not to follow through, due to the cost or other reasons.

Generally, many of our borough secretaries and staff members, who act as an Agency Open Records Officer, serve part-time in an office of one or two employees. Moreover, to keep taxpayer costs down, some borough offices are only open on select days and at certain hours of the week. Sadly, frivolous, or commercial Right-to-Know Law requests often take away from staff core functions like answering resident inquiries, preparing spending plans, overseeing day-to-day operations of departments, and facilitating economic development projects, among other responsibilities.

Today, I want to walk through three major challenges our boroughs face with the Right-to-Know Law:

1. Commercial requests that use taxpayer resources for private profit.

2. Vexatious requests that weaponize the law to harass local officials.

3. New challenges created by artificial intelligence and cybersecurity risks.

And then I'll touch on several other areas where the law needs clarification.

Commercial Requests
Boroughs across the state have been confronted with requests made by various commercial interests seeking to "data mine" a potential customer base at the taxpayers' expense. Many members have been inundated by out-of-state requests for records as well. Ranging from requests for building permits to tax collector statements, the surge of requests by commercial entities since the enactment of Act 3 certainly justifies allowing for reasonable commercial request fees. Doing so will help alleviate some of the administrative costs that are currently borne, in large part, by the local taxpayers.

PSAB supports Representative Pat Harkins' **House Bill 868** which would allow for reasonable commercial request fees. This legislation allows each agency to set a commercial requester fee that is reasonable to recoup part of the labor costs necessary to fulfil the Right-to-Know request. Additionally, journalists, newspapers and broadcast outlets would be exempt from the fee. Our members strongly endorse this version of the commercial request fee and encourage the committee to consider advancing the legislation to the House floor.

Vexatious Requests
Unfortunately, not everyone who makes a Right-to-Know request has a valid, legitimate motive for making the request. Under the current law, we are prohibited from asking why the documents are being requested. Some unfortunate horror stories have come to our attention of Right-to-Know requesters who very cleverly use the law to punish local officials. The requests could be a disgruntled citizen, a former employee, or a former public official who wishes to harass the local government, and in the case of many smaller boroughs and townships, shutting down the day-to-day functions. These so-called vexatious requesters file so many complex requests which force a municipality to divert administrative resources to fulfill these requests.

Unless an Agency Open Records Officer has technical expertise with providing "metadata" from all e-mails received, browser history from all computers, license information for your agency's PDF program, you will not realize that such requests can take 20-30 hours per week for municipal employees to fulfill the multiple requests or answering appeals to the Office of Open Records when something doesn't exist or does not meet the expectations of a vexatious requester. Also, there may be the additional expenses of the municipal solicitor needed, especially if an appeal is filed.

PSAB fully supports legislation to amend the Right-to-Know Law to provide a process to stop vexatious requesters. We have supported in the past legislation that allows an agency to petition the Office of Open Records with evidence that a requester has shown a pattern of burdensome requests. The Office of Open Records would then decide whether the petition has merit, and if the Office of Open Records approves the petition, the requester would be barred from making additional requests to that agency for a period of time.

Legislation currently before the Committee which would address this issue is **House Bill 974**, sponsored by Representative Tim Brennan. While we believe this legislation is a good start on addressing the issue of burdensome requests, we would like to see specific language which would allow an agency to petition the Office of Open Records to bar the vexatious requester. PSAB supported **Senate Bill 525** from last session which contained a reasonable vexatious requester process.

Artificial Intelligence
With the advent of artificial intelligence, it was only a matter of time that open records requests would utilize this new tool. Our members have seen open records requests generated by artificial intelligence with many errors. Furthermore, the requests sometimes require the download of a document or request to click on links which raise cybersecurity concerns.

PSAB is supporting **Senate Bill 431** which would allow agencies to deny access requests if the Agency Open Records Officer reasonably believes that downloading or clicking on a link in the request would pose a cybersecurity risk. Additionally, the agency would be able to deny the request if it is determined that it was automatically generated by a computer program or artificial intelligence.

Other Issues
Several other issues need to be clarified in the Right-to-Know Law. Our members would like to see a longer agency response time instead of the five days required in current law. This would give agencies, especially local governments, more time with the initial response. Also, the law needs clarification that agency bank account numbers, PINs, credit card numbers and passwords are not open to the public. Current law is silent on whether an agency's highly sensitive financial information is exempt from disclosure. This clarification will help defend against cyberattacks and keep this sensitive information private. **House Bill 1789**, sponsored by Representative Brett Miller, includes many of these clarifications on sensitive financial information.

Transparency is essential. But transparency should not come at the cost of a borough's ability to provide public safety, maintain infrastructure, or deliver basic services. Taxpayers shouldn't be asked to subsidize businesses looking for more clients.

We're asking for balance, a Right-to-Know Law that continues to give the public access to information but also gives local governments the tools they need to manage requests responsibly, protect taxpayer dollars, and keep their communities running.

Thank you for the opportunity to share PSAB's perspective and the experiences of borough officials across Pennsylvania. We ask your consideration of our positions as you deliberate further on Right-to-Know Law legislation.

****For the committee's reference, I have attached a limited list of comments offered by borough officials who have shared their perspectives on the impact of the Right-to-Know Law.*

Right-to-Know Law Comments offered from Borough Officials

1) It seems like many of the comments center around small boroughs **not having resources or time to complete the tasks** at hand. I wonder if somehow concessions on time limits can be made dependent on the number of employees in the borough. In our Boro, we have one full time and one part time employee. When a large request comes in, it can literally shut down an office like ours to get it compiled in time. Controlling requests from citizen is a trickier task than controlling business requests and gets into serious questions of citizen rights. It's a very subjective thing to say who is being genuine and who is being "annoying." We almost have to expect disgruntled citizens- they pretty much come with the job description (using the term loosely since we are largely volunteer around these parts).

2) There needs to be some provision to allow us to stop someone who has a **rift with the municipality** and is trying to get back at them by filing constant requests for records. Constant requests for information just to cause a disruption in the municipalities business can shut down small municipalities by making the municipality devote all its resources to satisfy requests. This has happened to our borough and several other small municipalities. I have spoken to legislators about this and to our solicitor and DA.

3) I have had one individual directly say to me that he knew I would **not be able to comply with his request** in the amount of time given (even with the 30 day extension), therefore making the Borough look like the "bad guy" unwilling to provide the information to him.

4) I believe that companies requiring the information for purely profitable purposes should be addressed. **Fence and pool companies** asking us to pull permitting records for their own purposes use borough employee time and therefore tax dollars to make a profit for themselves. Not to mention, it brings up privacy issues for residents. They may be on a do-not-call list, but end up getting unwanted sales calls because we had to hand out records that included their contact information.

5) I feel they should not allow **requests to be returned by fax**. We cannot charge for these requests ahead of time, because we don't know the actual cost. It is very difficult, if not impossible, to determine how much it cost to send a fax until a phone bill is received. Sending a large volume of papers by fax can be time-consuming. If the documents sent are double sided we have to make them one sided to fax. This allows requesters to not pay the per page fees. What incentive would people have to send the fee after they have already received the information?

6) I do not feel the Open Records Officer should have to have his/her signature notarized on a "**Non Existence of Record Form**". This is a huge inconvenience in a small borough. Our signature on borough letterhead paper should be enough.

7) I have had several very extensive requests filed by persons who were upset with the borough council. It seems like if someone doesn't get his way, he just **files an unreasonable request**, which I see as a legal way to harass the records officer. Last fall, a person who requested records filed a complaint against me, saying that I was "putting him off". When I received the letter from the state Office of Open Records, I called to find out what I should do. I was told that I would have to prove I did not violate the law. Basically, I was assumed guilty unless I proved otherwise. The person who filed the complaint didn't have to prove anything. I had very good documentation (lots of e-mails and notes) to show that I went above and beyond the law to provide the requested records. I had only 7 business days to get my documentation to the OOR. I had to work overtime, get the attorney involved, put my personal life aside, and focus on my defense. After I submitted my documentation to the OOR, the records requester finally came into the office to view the records, then called the OOR and withdrew the complaint. This is my 22nd year as borough secretary, and these types of complaints have brought me closer than ever to walking away from this job. I feel that if something doesn't change with this law, many municipalities will lose good employees and will have a difficult time replacing them.

TESTIMONY BEFORE THE HOUSE INTERGOVERNMENTAL AFFAIRS AND OPERATIONS COMMITTEE

Good morning, Chairman Delloso, Chairman Staats, and members of the House Intergovernmental Affairs and Operations Committee. Thank you for the opportunity to testify regarding Pennsylvania's Right-to-Know Law (RTKL), the Commonwealth's comprehensive public records statute.

My name is Melissa Melewsky, and I serve as in-house counsel for the Pennsylvania NewsMedia Association (PNA), the statewide trade association representing print and digital news organizations across Pennsylvania. Founded in 1925, PNA has long advocated for laws that strengthen government transparency, and we were actively involved in the legislative effort that produced the current RTKL.

In my role at PNA, I also administer the PNA Legal Hotline, where I respond to questions from journalists throughout the Commonwealth about the RTKL and other transparency laws. I answer approximately 2,000 inquiries each year, and more than half involve public access issues. Those numbers have remained consistent during my 20 years with the association.

While it is important to recognize that numerous other statutes also affect public access in Pennsylvania, today my testimony focuses primarily on the RTKL. While the RTKL represented a significant improvement over the prior law and placed Pennsylvanians in a better position to hold their government accountable, experience has revealed areas where the law can and should be improved. PNA has worked with legislators and stakeholders in prior sessions on comprehensive RTKL reforms, and we look forward to continuing that work with this committee.

Proposed Legislation Affecting the RTKL

PNA routinely monitors legislation for provisions that could unnecessarily restrict public access to government information. In recent sessions, we have increasingly seen bills that attempt to exempt their subject matter entirely from the RTKL.

These broad exemptions are problematic and often reflect a misunderstanding of the RTKL's structure. The RTKL already contains numerous carefully crafted exemptions that protect sensitive information while preserving transparency. These provisions were the product of extensive legislative debate and are informed by a substantial body of case law.

When legislation broadly exempts a subject area from the RTKL, it removes all associated information from public access, even information that would otherwise be available under the law. Such provisions often are unnecessary because the sensitive information they seek to protect is already exempt under the RTKL.

More importantly, sweeping confidentiality provisions in other statutes eliminate the RTKL's ability to balance information sensitivity with transparency. For example, under the RTKL, sensitive information like Social Security numbers, trade secrets, confidential proprietary information, or personally identifiable health information can be redacted while the remainder of a record is disclosed. This allows the public to obtain aggregated data or financial information that permits meaningful oversight while still protecting sensitive information.

If legislation instead removes an entire category of information or subject of a bill from the RTKL, that balance disappears. Records that could be released in redacted or aggregated form become entirely inaccessible. As more legislation attempts to carve out exemptions, the cumulative effect threatens to erode the RTKL itself. If the RTKL is to remain Pennsylvania's central transparency law, its framework should not be bypassed through piecemeal statutory exemptions.

Other Statutes Affecting Public Access

In addition to RTKL issues, PNA frequently hears concerns about other statutes that significantly restrict access to information. These include the Disease Prevention and Control Law (DPCL), 35 P.S. § 521.1 et seq., 42 Pa.C.S. § 67A01, et seq. governing public access to law enforcement audio and video recordings, and provisions of the Criminal History Record Information Act (CHRIA), 18 Pa.C.S § 9101, et seq.

These laws often create substantial barriers to accessing information about government activity, particularly in areas where public understanding and oversight are critical. We encourage the committee to consider how these statutes and others interact with the RTKL when evaluating potential reforms to Pennsylvania's transparency laws.

Timing and Administrative Barriers

The most common issue reported by journalists across Pennsylvania involves delays in obtaining public records. These delays often result from two related practices: requiring formal RTKL requests for clearly public records and the routine use of the statute's 30-day extension.

The RTKL does not require a formal request for every public record. In fact, the law's formal procedures were intended primarily for situations where the public nature of a record is uncertain. Nonetheless, journalists are frequently required to file written RTKL requests for records that are unquestionably public, such as meeting minutes, contracts, salary records, proposed budgets, settlement agreements, and ordinances, to name a few.

This practice wastes both the requester's time and public resources by triggering an unnecessary administrative process.

This problem is compounded by the routine use of the RTKL's 30-day extension. While the law requires agencies to respond "as promptly as possible under the circumstances," many agencies automatically invoke the extension regardless of the nature of the request.

The extension was intended for limited circumstances where additional time is truly necessary. Instead, it has become standard practice in many agencies, and there is currently no effective mechanism to challenge its misuse.

For journalists working under tight deadlines, these delays can render access meaningless. For example, reporters often request board packet materials prior to public meetings. A common agency response is to wait five business days and then issue a 30-day extension, long after the meeting has occurred and decisions have been made. This practice is not limited to requests from journalists; ordinary citizens seeking access have reported similar barriers to access as well.

The RTKL was intended to promote timely transparency and the public participation it generates. When administrative barriers and delays prevent timely access, that purpose is undermined.

One potential solution would be to adopt the "reading room" concept used in the federal Freedom of Information Act, which encourages agencies to proactively provide commonly requested public records outside the formal request process. Similarly, language that encourages informal production of public records could reduce delays and waste of resources associated with unnecessary formal procedures.

Criminal and Non-Criminal Investigation Exemptions

Two of the most significant barriers to access involve the RTKL's criminal and non-criminal investigation exemptions.

Both exemptions are extremely broad and contain no time limitations. Once a record is deemed investigatory, it will remain permanently exempt, even after an investigation is closed.

Pennsylvania's criminal investigation exemption is among the most restrictive in the nation. As interpreted by the courts, it effectively shields most law enforcement records from public access, including records related to closed cases.

This interpretation has eliminated public access to criminal incident reports that were available under the prior, more restrictive law. Incident reports typically contain basic information about police activity, the same information a citizen could observe if standing at the scene. Yet under current case law, access to these records is routinely denied.

The RTKL requires police to provide "blotters," or chronological listings of arrests. However, many law enforcement agencies maintain that they do not keep blotters and therefore are not required to produce them. Moreover, not all police responses result in arrests.

The result is that Pennsylvanians often have no meaningful access to basic information about criminal activity in their communities.

Public access to this information serves several important purposes. It helps residents understand risks in their community, enables the public to assist law enforcement, combats misinformation, and allows the public to scrutinize police activity.

PNA is not suggesting unfettered access to investigative files. However, the law should ensure public access to basic information about police activity and investigations that have been closed.

The non-criminal investigation exemption presents similar concerns. Courts have interpreted it broadly enough to encompass many routine regulatory activities conducted by government agencies. As a result, agencies have denied access to records such as daycare inspection summaries, nursing home inspection reports, and other basic public safety inspections, as well as records like gas drilling inspection records, building code inspections, gas explosion investigation reports and records related to bridge collapses.

These are precisely the types of records that allow citizens to make informed decisions about their health and safety. At a minimum, the statute should clarify that the results of non-criminal investigations are public records.

Record Formats

Another persistent, and increasingly consequential barrier to meaningful access involves the format in which records are produced. While the RTKL requires agencies to provide records in the format requested "if it exists," judicial interpretations have created a loophole that undermines that mandate. Courts have permitted agencies to take data maintained in dynamic, searchable formats and convert it into static PDF files before release.

That practice is not a neutral administrative choice, it materially degrades the record. For example, when an agency exports an Excel database into a PDF, it strips away the very features that give the record value: sortability, searchability, embedded formulas, and the ability to analyze trends and verify calculations. What was once a functional dataset becomes, in effect, a static printout. For journalists, researchers, and members of the public trying to understand government activity, that conversion can turn usable information into something that is functionally opaque.

This is not a hypothetical concern. Agencies routinely maintain data in structured formats precisely because those formats allow them to analyze, control, and act on the information efficiently. Allowing those same agencies to provide the public with a degraded version of that data creates an uneven playing field where government officials retain full analytical capability, while the public is left with a static snapshot that resists scrutiny.

The consequence is a quiet but significant erosion of transparency. Access to records is not just about whether information is disclosed, but whether it is disclosed in a way that allows the public to actually use it. A right of access that delivers unusable data is, in practice, an incomplete right.

We believe legislative clarification is warranted. At a minimum, the statute should make clear that when an agency maintains and uses information in a dynamic or native format, it must provide that information in the same format upon request, unless the requester affirmatively agrees to an alternative. This would restore the balance intended by the RTKL and ensure that access to public records remains meaningful.

Pre-Decisional Deliberations

The RTKL's pre-decisional deliberative exemption is one of the most frequently invoked bases for denial. In practice, it has become a catchall justification for withholding records that are essential for the public to understand not just what government decides, but how and why those decisions are being considered in the first place.

That problem is particularly acute in the context of public meetings. Section 708(b)(10) was intended to preserve access to records that are presented for discussion or action at a public meeting, ensuring that citizens can follow the discussion and offer informed comment before action is taken. But that intent is routinely frustrated. Agencies often withhold slide decks, briefing materials, draft proposals, and supporting data on the grounds that they are "pre-decisional," or they release them only after the meeting has concluded.

That timing matters. When records are withheld until after a vote, or even until after the discussion has occurred, the public is effectively shut out of the deliberative process. A right to attend a meeting without access to the materials being discussed is not meaningful transparency; it is observation without understanding. The result is a hollow form of participation where the public can listen but cannot engage in an informed way. Section 708(b)(10)(ii) was intended to eliminate this imbalance, but all too often, its mandates are ignored.

Transparency is especially critical before decisions are made, when public input can still make a difference, not after the fact, when disclosure serves as a retrospective explanation.

We believe legislative clarification is needed to restore balance. At a minimum, the law should make clear that records presented for discussion or action at a public meeting must be made available to the public at or before the time of the meeting. In addition, the exemption should be more narrowly defined to ensure it does not extend to purely factual materials, records that are shared outside the agency, or information used to inform public-facing deliberations.

Without these guardrails, the pre-decisional exemption will continue to operate as a broad barrier to timely and meaningful public access.

Emergency Response Logs

We believe the RTKL should be amended to define the minimum content requirements of emergency time response logs. These logs track calls to and responses by first responders, including police, fire, and EMS, but the statute does not define the term. As a result, public access varies widely, and some agencies have interpreted the law narrowly prohibiting access to basic information like the location of a response or the nature of the emergency.

If five suspected overdoses occur on the same block in a single week, the public should be able to see that pattern and ask whether additional emergency resources or public health interventions are needed. Yet under current interpretations of the law, the public may not have access to the very information that would reveal those patterns.

These limitations significantly hinder the public's ability to understand how emergency services operate in their communities. For example, without access to response location information, residents cannot

determine whether emergency response times vary between neighborhoods or whether certain areas are experiencing recurring safety issues.

Emergency response logs also allow the public to identify broader community risks. If responders are repeatedly dispatched to the same intersection for serious vehicle accidents, residents may reasonably ask whether road design, traffic controls, or lighting should be improved. Likewise, if firefighters are repeatedly dispatched to the same building for serious incidents, that pattern may raise questions about building safety or code enforcement.

Access to this information also helps prevent misinformation. When police respond to incidents such as suspected burglaries, shots fired, or other serious events, rumors often circulate quickly. Basic information about the response, such as when it occurred, where it occurred, and the type of emergency involved, helps ensure the public receives accurate information rather than speculation.

For these reasons, we respectfully suggest that the RTKL should be amended to clearly define emergency time response logs and establish minimum content requirements. At a minimum, the statute should ensure public access to the date and time of the call, the times of dispatch, arrival and release from service, the location of the response, the nature of the emergency, and the responding agency. Clarifying these elements would eliminate inconsistent interpretations and ensure that Pennsylvanians have meaningful access to basic information about emergency responses in their communities.

Vexatious Requesters

The line between a "vexatious" requester and a persistent watchdog is often in the eye of the agency being scrutinized. For that reason, and others, PNA does not believe such provisions are necessary to ensure the effective operation of the Right-to-Know Law, and we urge the committee to approach this issue with caution.

First, available data indicates that vexatious requesters are extremely rare. A study conducted by the Legislative Budget and Finance Committee found that the overwhelming majority of RTKL requests are routine and manageable. In addition, local government representatives have acknowledged that members of the news media are not responsible for the types of requests that have prompted concerns in this area. In my experience on the PNA Legal Hotline, journalists overwhelmingly seek targeted records that are necessary to inform the public about government activity.

Second, provisions allowing agencies to label requesters as "vexatious" are susceptible to misuse, particularly by agencies that misunderstand or misapply the RTKL. Government officials already have significant discretion in responding to requests, and adding a mechanism that allows agencies to restrict a person's ability to seek public records could create a powerful tool for avoiding scrutiny. A requester who persistently seeks information about controversial government decisions could be characterized as vexatious simply because their requests are uncomfortable for the agency receiving them.

Third, any system that allows agencies to petition for relief from alleged vexatious requesters could place additional strain on the already limited resources of the Office of Open Records. There are thousands of state and local agencies in the state, and if they begin filing petitions seeking to limit or block requests, the Office could quickly become inundated with disputes over requester conduct rather than disputes over

the public nature of records. This would likely slow the RTKL appeals process for everyone and further delay access to public information.

Finally, restricting an individual's ability to request information from the government raises serious constitutional concerns. The process of seeking public records is closely tied to the rights of free speech, free press, and petitioning the government for redress of grievances under the First Amendment. A government system that allows officials to prohibit or limit an individual's access to public records could invite significant constitutional challenges in federal court.

For these reasons, PNA believes that legislation addressing vexatious requesters should be approached cautiously and if deemed necessary, crafted as narrowly as possible. If such legislation moves forward, the news media should be expressly exempted to safeguard their constitutionally protected role in gathering and disseminating information about government activity. More broadly, any provision that limits the public's ability to request information from its government must be carefully designed to protect the statutory and constitutional rights that form the foundation of public accountability.

Fee Shifting

Another significant weakness in the RTKL is the lack of meaningful enforcement mechanisms, particularly with respect to fee shifting. While the statute allows courts to award attorney's fees when an agency acts in bad faith or relies on an unreasonable interpretation of the law, those standards are extremely difficult to meet. As a result, fee awards are exceedingly rare.

In the nearly two decades since the RTKL's enactment, courts have imposed sanctions or awarded attorney's fees only a handful of times. In practice, this means there is little financial consequence for agencies that improperly deny access to public records.
The practical result is that citizens who wish to enforce their rights under the RTKL often must finance costly litigation against government agencies that are represented by taxpayer-funded counsel. Even when a requester ultimately prevails in court, they are unlikely to recover the costs associated with obtaining the records.

For many citizens, this creates a significant barrier to enforcing the law. The cost of litigation can quickly reach tens of thousands of dollars, far more than most individuals can afford simply to obtain information about their government. Faced with these costs, many requesters are forced to abandon legitimate claims, allowing improper denials to go unchallenged.

This dynamic undermines the RTKL's presumption of openness. A transparency law is only as effective as its enforcement mechanisms. When the financial burden of enforcement falls entirely on the requester, the law's promise of access becomes difficult to realize in practice.

Meaningful fee shifting would help restore the balance intended by the statute. If a requester is forced to pursue litigation to obtain records and ultimately prevails, the law should provide for reimbursement of reasonable attorney's fees, or a relevant portion thereof. This approach would not encourage unnecessary litigation. Rather, it would ensure that requesters who successfully enforce the law are made whole.

Importantly, stronger fee-shifting provisions would also encourage better compliance with the RTKL at the agency level. When agencies know there are meaningful consequences for flawed denials, they are more likely to carefully evaluate requests and apply the law correctly in the first instance.

At the same time, courts would retain discretion to adjust fee awards in cases where a partial access is granted or a requester acts in bad faith. This balanced approach would promote compliance with the law while discouraging frivolous litigation.

Citizens should not have to mortgage their homes or deplete their retirement savings to obtain information about their government. Strengthening the RTKL's fee-shifting provisions would ensure that the right of access guaranteed by the statute can be meaningfully enforced by the people it was intended to serve.

Thank you again for the opportunity to testify about a few of the issues facing journalists, and Pennsylvanians more broadly, in the RTKL context. PNA looks forward to working with the committee to strengthen Pennsylvania's Right-to-Know Law and government transparency for all Pennsylvanians. I would be happy to answer any questions today and as the committee continues this important work.

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INTRAGOVERNMENTAL AFFAIRS AND OPERATIONS COMMITTEEE
PENNSYLVANIA STATE CAPITOL
Room 60 / East Wing
Monday, March 23, 2026 9:15 a.m.

TESTIMONY OF
TERRY MUTCHLER, ESQ.
OBERMAYER REBMANN MAXWELL AND HIPPEL, LLP
FOUNDING EXECUTIVE DIRECTOR OF THE OFFICE OF OPEN RECORDS
CHAIR, OBERMAYER'S TRANSPARENCY LAW AND PUBLIC DATA

I had the privilege of serving as the founding Executive Director of the Commonwealth's Office Open Records. I now serve as Chair of Transparency and Public Data Practice at Obermayer Rebmann Maxwell and Hippel. I want to thank the Committee for the opportunity to testify before you and I am submitting this written testimony in advance of the hearing. I provide professional background here regarding my experience.

I. TERRY MUTCHLER BIOGRAPHY

By way of background, I am former investigative reporter for the Associated Press covering politics in Pennsylvania, New Jersey and Illinois, where I served as the first woman statehouse bureau chief. I was AP's Atlantic City Correspondent **covering Donald Trump and his businesses** in the 1990s.

I traded my press pass for my law license and am licensed to practice law in Pennsylvania, Illinois, **the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit.** I served as **Illinois First Public Access Counselor, Assistant Attorney General and Senior Advisor** to the first woman attorney general, **Lisa Madigan**. I clerked for the **Chief Justice of the Supreme Court of Illinois, Republican Benjamin K. Miller,** and clerked for the **Executive Office of the President of the United States under the Clinton Administration.**

While in Illinois, **then- Deputy Speaker Josh Shapiro** asked me to help review early drafts of the state's transparency legislation. He then brought me to Pennsylvania and **Governor Edward G. Rendell,** appointed me as Executive Director of the OOR in April 2008. I started the office alone in the back of a dismantled state library in the DCED building. I interviewed applicants, created a budget and began conducting more than 1,500 trainings around the state. The original staff, Deputy Director Barry Fox, Chief Counsel Dena Lefkowitz, Lucinda Glinn, MaryAnne Brawley, Chief Counsel Corinna Wilson, were integral in creating the success of that Office, which was built it into an eventual 22-person, $2 million agency that handled more than 25,000 appeals and more than 1,000 court cases.

During my tenure, **the Obama administration** asked me to train **Pentagon officials** and federal contractors on the Federal Freedom of Information Act, and from that experience conducted jointly with **Lockheed Martin lawyers**, I started the nation's first Transparency Law practice helping media, multinational corporations, and government officials navigate these complex transparency laws. I also serve as the Vice President of the **National Freedom of Information Coalition at the Brechner Center at the University of Florida.**

A. PENNSYLVANIA MODEL OF TRANSPARENCY

1. Testimony before Congress and state Legislative bodies

I established what became known as the Pennsylvania Model of open government and was tapped by **Congress** to testify on this model as they established the federal Ombudsman tole to address the records requests under the federal Freedom of Information Act.

Rep. William Lacy Clay, D-Mo., then-chair of the Information Policy, Census, and National Archives subcommittee of the House Committee on Oversight and Government Reform, asked me testify about how we created the Office of Open Records, or the Pennsylvania Model as it was deemed. They were establishing the federal FOIA Ombudsman role for assistance with the backlog and resistance to processing requests for records under FOIA. I also was provided testimony to the states of Washington, Illinois and Ohio in this regard.

2. International Attention

We had international attention to the creation of the Office of Open Records.

The Hague sent a representative to study our model, as did the **Japanese Judiciary** as well as journalists from the country of **Georgia**. I include this because the Pennsylvania Right to

Know Law is a shining example of transparency, and we are among the strongest states with an independent arbiter of public records. But it does need some fixes.

B. THE RIGHT TO KNOW LAW (RTKL)

Pennsylvania's RTKL is one of the strongest in the nation – and there are many success stories of this law. But it risks losing that status because it is in dire need of Legislative attention. While I do not have all the answers, I focus **on four aspects of the law** that continue to plague Pennsylvania and will continue to cause the quality of this law to slip.

The University of Missouri's National Freedom of Information Center when ranked Pennsylvania as 49th worse in the United States until the new law was adopted. With the creation of the Office of Open Records, PA moved up the reputation chain to 14th by NFOIC within three years. It has since dropped to 25th and here are the areas that I believe have contributed to that decline that need Legislative attention.

II. PROCEDURAL CHANGES

A. DEADLINES

Under the current law, the OOR must issue its decision within 20 business days or 30 calendar days of the date of the appeal. In short, the OOR cannot set its own docket schedule for issuing Final Determinations. In other words, they cannot grant an extension even when each of the appeals officers have a workload larger than an assistant district attorney in Philadelphia. The sole holder of a request for extension is the Requestor. The OOR is a quasi-judicial agency. And with more than 30,000 appeals it needs to be able to extend, when necessary, the 20-business day deadline (30-calender days particularly when the cases are complex including in-camera reviews of thousands and sometimes in the millions of pages.

Consider this: if an appeal were pending at the Commonwealth Court for example, and the only person that could set the schedule were the Plaintiff – one could easily see the problems that can arise, particularly when OOR operates on a shoe-string budget with a massive workload.

B. LACK OF DUE PROCESS PROBLEMS FOR THIRD PARTIES

When a vendor has a contract with a state or local agency, they are known as a third-party under the law. This happens when a vendor is hired to perform a governmental function under the law. Often times, though, when a RTKL request is filed, and records of vendors are sought – the third-party has no idea that their records – including confidential and proprietary

records – are at risk. Over and over again, records of private corporations have been at risk of exposure and they often times don't even know it as I explain below.

The Pennsylvania Supreme Court and the Commonwealth Court has highlighted this critical problem in more than a dozen cases. It is my opinion that this is the most significant legal issue with the law. As far back as 2010, then Chief Justice Ronald Castille of the Supreme Court questioned the constitutionality of the RTKL given the lack of due process as explained below.

The Supreme Court has held that under the RTKL, third parties must be afforded notice and an opportunity to be heard. City of Harrisburg v. Prince, 219 A.3d 602, 619 (Pa. 2019)

Strikingly, we have no way to measure how many records have gone out the door without a company even being aware of it. The reason is that the only way a RTKL request makes it to the Office of Open Records – is when the lower agency denies the request.

The Legislature should address this flaw in the law. Every C-Suite of companies doing business with or is regulated by a state or local agency would be sweating bullets if they are aware of this.

Here is a list of cases to be examined related to DUE PROCESS.

- **Pa. Tpk. Comm'n v. Elec. Transaction Consultants Corp., 230 A.3d 548 (Pa. Commw. Ct. 2020)**.

Kapsch is electronic tolling company won a multi-million contract with a state agency. A competitor, ETCC, filed a Right to Know Law request seeking information about the winner.

While that is totally appropriate, the request sought confidential and proprietary records and financial records of the company, however, NO ONE provided notice to the third-party that their records were at risk of public disclosure. For hundreds of days, Kapsch had no idea that is confidential and proprietary information was sought.

- **PharmaCann Penn LLC v. Ullery (Pa. Cmwlth**., Nos. 172-174, 183-184 C.D. 2018, filed October 16,2019), slip op. at 30-31

Here the courts vacated the final determination and remanding to the OOR where the OOR failed to afford a third-party an adequate time to respond to issues raised in appeal.

- **COLEMAN TERRELL** v. **PHILADELPHIA DEPARTMENT OF BEHAVIORAL HEALTH AND INTELLECTUAL DISABILITY SERVICES v. MERAKEY**

Merakey provides essential substance use disorder recovery services at the Riverview Wellness Village in Northeast Philadelphia. It does this pursuant to a contractual arrangement with the City of Philadelphia. Merakey has operated at the Wellness Village since its opening in January 2025 by providing a proprietary and innovative system of care that addresses a critical gap in substance use disorder recovery—recovery housing, warm handoffs, and medication-assisted treatment. In short, Merakey has created a first-class treatment option unlike any other currently operating, which is why it is critical to protect the confidential and otherwise exempt information from competitors and others that wish to build on the backbone of our work.

A requestor sought a 100-part RTKL Request for the companies records under the contract and for weeks, Merakey officials had no idea that the request was in play.

Merakey agrees with the importance of this transparency law and has provided numerous public records to the requestor and makes innumerable records available on its website.

But Merakey also is cognizant that the law carefully and properly separates public records from non-public exempted records. They should not have to turn over their playbooks, which they devoted intense financial and personnel resources to creating, and have kept secure internally.

The Judiciary agrees with this idea and has held that while exemptions are narrowly construed, it is equally important that agencies protect records that are exempt from disclosure under the thirty (30) exceptions carved out by the Legislature. *See McKelvey v. Dep't. of Health*, 667 Pa. 337 (Pa. 2021). Third-Parties Interest CANNOT be Waived.

In order to properly balance the law, including the components that protect confidential and proprietary material – the Legislature must correct the flaw in the law where companies doing business with the state are not provided proper DUE PROCESS NOTICE.

1. **JUDICIAL HOLDINGS**

The *Kapsch Court* is worth quoting at length and will provide the Committee with a deeper to understanding of what is at play.

COMMONWEALTH COURT:

> *While "neither the requester, the agency, nor [the] OOR have a duty under the RTKL to provide notice to a third party whose interests may be impli cated by a RTKL request[,]" we have "consistently recognized the serious due process concerns implicated by this lack of notice, particularly where the confidential information of a private entity is at stake." Dep't of Corrections v. Maulsby, 121 A.3d 585, 590 (Pa. Cmwlth. 2015). See also Bagwell v. Pennsylvania Dep't. of Education, 76 A.3d 81, 91 (Pa. Cmwlth. 2013) (recognizing "the necessity of protecting rights of third parties because the RTKL lacks a mechanism for §67.708(b)(11)).*

The courts, doing their best to ensure due process for third parties, have established some baseline standards that are now used in these circumstances.

COMMONWEALTH COURT:

> *"Accordingly, we construe the RTKL to afford due process to third parties, including the ability to submit evidence and assert exemptions at the appeals officer level." Highmark Inc. v. Voltz,163 A.3d at 490. See also, City of Harrisburg v. Prince, 219 A.3d 602, 619 (Pa. 2019) (holding that under the RTKL, third parties must be afforded notice and an opportunity to be heard).*

Courts have also instructed the OOR to conduct *in camera* review of confidential proprietary information before deciding if it is public. Maulsby, 121 A.3d at 590; Bari, 20 A.3d at 648.

In instances where the OOR fails to provide a third party with notice and/or a meaningful opportunity to be heard, courts have held that the appropriate remedy is to vacate the OOR's final determination and remand to the OOR so that the third-party can be given an opportunity to challenge the disclosure of the requested records. *See, e.g.* PharmaCann Penn LLC v. Ullery (Pa. Cmwlth., Nos. 172-174, 183-184 C.D. 2018, filed October 16,2019), slip op. at 30-31 (vacating the final determination and remanding to the OOR where the OOR failed to afford a third-party an adequate time to respond to issues raised in appeal); Pennsylvania Dep't. of Conservation and Natural Resources v. Vitali (Pa. Cmwlth., No. 1013 C.D. 2014, filed July 7, 2015), slip op. at 18-19 (vacating final determination and remanding to the OOR where a third-party was not notified of the request so that the third-party could be given an opportunity to submit evidence concerning the exemption of

records); Maulsby, 121 A.3d at 593 (vacating the final determination and remanding to the OOR where the Department of Corrections failed to notify a third party).

COMMONWEALTH COURT:

> *While the RTKL does not provide a mechanism for third-party participation in every instance where a third-party interest is implicated in a request, the RTKL specifically requires agencies to notify third parties where requests involve trade secrets. Section 707(b) of the RTKL, titled "Requests for trade secrets," provides as follows: An agency shall notify a third-party of a request for a record if the third-party provided the record and included a written statement signed by a representative of the third-party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five business days of receipt of the request for the record. The third-party shall have five business days from receipt of the notification from the agency to provide input on the release of the record. The agency shall deny the request for the record or release the record within ten business days of the provision of notice to the third party and shall notify the third party of the decision. 65 P.S. § 67.707(b)(emphasis added). Additionally, the RTKL does not require the OOR—but maybe should-- to notify third parties that it has a direct interest in appeals.*

2. Recommended Legislative Solution

A legislative solution to this critical due-process issue would be to pen a due-process notification into the law requiring agencies under their duties to provide notice to the third parties when their records are at play. The Legislature obviously intended this if one examines section 707 of the law.

> **Section 707. Production of certain records. (a) General rule.--If, in response to a request, an agency produces a record that is not a public record, legislative record or financial record, the agency shall notify any third party that provided the record to the agency, the person that is the subject of the record and the requester. (b) Requests for trade secrets.--An agency shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five business days of receipt of the request for the record. The third party shall have five business days from receipt of notification from the agency to provide input on the release of the record. The agency shall deny the request for the record or release the record within ten business days of the**

provision of notice to the third party and shall notify the third party of the decision.

3. SOLUTION AT OOR:

Alternatively, the Legislature could direct the Office of Open Records to require agencies on appeal to submit an affidavit that it has provided notice to any third-party whose records are sought.

C. CRIMINAL INVESTIGATIVE RECORDS

Pennsylvania is the only state that removes investigative records off the table in perpetuity. Consider a RTKL request that sought information for a 100-year-old fire: the agency holding the records denied the records using the criminal investigative records exemption.

Such a preclusion is in, my view, direct contravention to the Supreme Court's stated mission: The RTKL is "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." Bowling v. OOR, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), appeal granted 15 A.3d 427 (Pa. 2011).

The criminal investigative exception is one of the reasons, in my view, the Pennsylvania marks are slipping in terms of transparency. This should be corrected by Legislative action.

Of course, during the pendency of an investigation, these records should not be accessible. But months and years afterward, citizens must be able to review and analyze various records do be in line with the Supreme Court's edict of scrutinizing public action.

D. STATE-RELATED INSTITUTIONS

Please let me begin by noting I am an alumna of the Pennsylvania State University, serve on one of its boards and also was honored as Alumna of the Year at the Donald P. Bellisario College of Communications.

Pennsylvania is one of only three states in which the state-related universities – Penn State, Temple, University of Pittsburg, and Lincoln University – receive public funding but are not subject the full panoply of the RTKL. The only other states that operate in this fashion are Delaware and Alaska.

For example, the University of Illinois, the University of California schools, and the University of Wisconsin are all subject to the state's transparency laws. Penn State, Temple, Lincoln, and Pitt, however, are mostly exempt except for three aspects of transparency—they are only subject to Section 1505 of the RTKL with respect to specific salaries and contracts over $5,000.

These institutions individually receive roughly a half of a billion dollars of taxpayer monies. And it is my view that as a result – their books should be transparent and accountable.

III. CONCLUSION

It is my honor to testify before this Committee today and I thank you for your time and attention. I urge you to consider the changes to the Pennsylvania Right to Know Law that I have suggested today.