



**Testimony of Nathan Byerly  
Acting Executive Director, Office of Open Records**

*House of Representatives  
Appropriations Committee  
The Honorable William F. Adolph, Jr., Chair  
March 25, 2015 11:00 A.M.  
Main Capitol, Room*

Mr. Chairman, members of the Committee.

Thank you for the opportunity to appear before the House Appropriations Committee and talk with you about the very important work performed by the Office of Open Records (OOR) and the challenges it faces.

My name is Nathan Byerly and I have the privilege of serving as the Acting Executive Director of the OOR. I am honored to be able to discuss the impact the proposed budget would have on the OOR and the citizens of the Commonwealth as well as answer any questions that you may have about the Office and the Right-to-Know Law (RTKL).

The OOR is an independent, quasi-judicial agency charged with implementing and enforcing the RTKL, which became effective in 2009. The Office and RTKL draw their purpose from the well-founded principle that successful government must be held accountable by its citizens through transparency. The hallmark of a free society is citizen access to and involvement in the governing process. Without transparency, such involvement is impossible. Excluding inmate appeals, the OOR grants access to records in approximately 66% of its final determinations when deciding an appeal on the merits.

As I speak with similar government offices around the country, I am reminded of the foresight of Senator Dominic Pileggi in drafting the Right-to-Know Law and the vision of the General Assembly to support and pass such a revolutionary law. It has been a huge success mainly because of the binding authority given to the OOR by the General Assembly and upheld by the courts. The mere presence of the OOR as a watchdog fosters greater access to government records.

Terry Mutchler, the first Executive Director of the OOR, from time to time compared the journey of the Office to whitewater rafting. Each time we get a glimpse of what lies ahead, the fast ever changing river gets faster and longer. The analogy remains accurate.

I must pause here to emphasize that despite facing a time of significant change and uncertainty, the OOR continues to operate in the same way it always has. What does this mean for your constituents? Citizens and agencies continue to receive a fair and impartial consideration of all RTKL appeals filed with the OOR. Additionally, the OOR continues to be the open government hotline for any questions regarding the Right-to-Know Law, the Sunshine Act, and record retention. The OOR staff and I remain committed to deciding every appeal justly and responding to every inquiry in a timely fashion. Regardless of what lies ahead, with your strong support and commitment to the peoples' business, we stand ready to promote transparency and accountability in Pennsylvania government.

However, today, I would like to focus on the proposed budget and how that budget will affect the OOR and, ultimately, the citizens of the Commonwealth. I am grateful for the current budget proposal by Governor Wolf and his team which includes an increase to cover some of the rising personnel and pension costs. Since the Governor took office, we have had a continuing positive interaction with the Office of the Budget regarding the OOR's budget and potential remedies to the shortfalls we face. We look forward to continuing to work with the Office of the Budget and the General Assembly to remedy any resulting problems these shortfalls may create. Still, it is my responsibility to advise this Committee regarding the crippling impact if the Office is not properly staffed and funded.

Without an additional increase, the proposed budget leaves the OOR with no operating budget. In short, the Office would be forced to eliminate a staff position to fund its day-to-day operations. The result would be disastrous in light of the increasing workload. Such a result would surrender the progress we have made in the past six years and force the OOR to give up the staffing gains previous budgets have provided. The OOR needs an additional \$360,000 to be able to fulfill its mission envisioned by the General Assembly in the RTKL.

Several factors drive this need. First, the OOR's workload continues to increase at an amazing pace despite a decrease in the overall number of appeals filed with the OOR in 2014. This is driven by a significant increase in the number of complex cases and expanded use of tools available to the OOR.

The OOR hears and decides complicated high profile issues such as, but not limited to, Bakken crude oil transport, drugs used during executions, and police dash cams. These issues interact with dozens of federal and state laws requiring additional time to research and analyze the multifaceted interaction of laws. More complex cases also require additional OOR monitoring and involvement in added court legal challenges.

Second, now more than ever, the OOR is using its court-sanctioned authority to conduct *in camera* review. This enables the OOR to look at the actual documents requested to determine whether they should be released. While *in camera* review is the best scenario for ensuring transparency, the process is time consuming and can involve literally thousands of pages. When an appeals officer conducts an *in camera* review, it is in addition to managing dozens of other cases, issuing orders and final determinations, and other duties of that appeals officer. This is in addition to the growing time and cost associated with conducting mediations and hearings.

Third, the need for training remains constant. There is a steady turnover of agency open records officer across the Commonwealth. Many times new open records officers are unfamiliar with the law and make simple mistakes that result in unnecessary appeals (e.g. failing to respond within five business days). Training open records officers enables them to avoid mistakes that generate unnecessary appeals while at the same time honing the skills of more experienced open records officers. The result is a more efficient use of government resources in complying with the RTKL.

Finally, the OOR is unable to follow through with some of its other statutory responsibilities. For example, agencies are required to post contact information for their open records officers on agency webpages. Many agencies do not comply and the OOR is without resources to regularly reach out to these agencies or otherwise enforce the RTKL with respect to website posting requirements. This directly impacts a citizen's ability to use the RTKL. Similarly, under the RTKL, agencies are permitted to develop their own RTKL policies. However, some agencies have developed policies that directly contradict the RTKL (e.g. charging fees for labor).

It is very difficult to convey the actual amount of work this office faces compared to the limited staff resources. In 2014, the OOR decided 2,017 appeals. Additionally, as required by the RTKL, the OOR responded to nearly 800 right-to-know requests seeking records from the OOR. In accordance with its statutory

mandate, the OOR continued to respond to thousands of citizen and agency inquiries, litigate or monitor nearly 300 court appeals, and conduct dozens of trainings across the Commonwealth. We do this with a staff ranging from 7-9 appeals officers. Candidly, we need more.

I am very cognizant of the fiscal challenges facing the Governor and General Assembly. However, we cannot retreat from the progress we have made in attaining the General Assembly's goal of transparent and honest government. Seeing how big and far reaching this task is, I can only ask that we all continue to work together to accomplish and fund the important mission the General Assembly gave to the Office. It is an honor to serve this noble cause, and I am happy to now take your questions.