

1
2 COMMONWEALTH OF PENNSYLVANIA
3 HOUSE OF REPRESENTATIVES
4 HOUSE APPROPRIATIONS COMMITTEE

5
6 THE MAIN CAPITOL
7 ROOM 140
8 HARRISBURG, PENNSYLVANIA

9
10 WEDNESDAY, FEBRUARY 22, 2012
11 2:40 P.M.

12
13 PUBLIC HEARING
14 OFFICE OF ATTORNEY GENERAL

15
16 BEFORE:

17 HONORABLE WILLIAM F. ADOLPH, JR., CHAIRMAN
18 HONORABLE JOSEPH F. MARKOSEK
19 HONORABLE JOHN C. BEAR
20 HONORABLE MARTIN T. CAUSER
21 HONORABLE JIM CHRISTIANA
22 HONORABLE GARY DAY
23 HONORABLE GORDON DENLINGER
24 HONORABLE BRIAN L. ELLIS
25 HONORABLE MAUREE GINGRICH
HONORABLE GLEN R. GRELL
HONORABLE DAVID R. MILLARD
HONORABLE T. MARK MUSTIO
HONORABLE BERNIE O'NEILL
HONORABLE MIKE PEIFER
HONORABLE SCOTT A. PETRI

1 CONTINUED:

2 HONORABLE JEFFREY P. PYLE
3 HONORABLE THOMAS QUIGLEY
4 HONORABLE MARIO M. SCAVELLO
5 HONORABLE CURTIS G. SONNEY
6 HONORABLE MATTHEW D. BRADFORD
7 HONORABLE MICHELLE F. BROWNLEE
8 HONORABLE H. SCOTT CONKLIN
9 HONORABLE PAUL COSTA
10 HONORABLE DEBERAH KULA
11 HONORABLE TIM MAHONEY
12 HONORABLE MICHAEL H. O'BRIEN
13 HONORABLE CHERELLE L. PARKER
14 HONORABLE JOHN P. SABATINA, JR.
15 HONORABLE STEVE SAMUELSON
16 HONORABLE MATTHEW SMITH
17 HONORABLE GREG VITALI
18 HONORABLE RONALD G. WATERS

19
20 ALSO PRESENT:

21 HONORABLE KERRY A. BENNINGHOFF
22 HONORABLE JOHN R. EVANS
23 HONORABLE MARK M. GILLEN
24 HONORABLE PAUL I. CLYMER
25 HONORABLE WILL TALLMAN
HONORABLE DICK HESS
HONORABLE WILLIAM C. KORTZ, II
HONORABLE VANESSA LOWERY BROWN
HONORABLE H. WILLIAM DeWEESE
HONORABLE DAN FRANKEL
HONORABLE JAKE WHEATLEY
HONORABLE PETER J. DALEY

EDWARD NOLAN, MAJORITY EXECUTIVE DIRECTOR
MIRIAM FOX, MINORITY EXECUTIVE DIRECTOR

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BRENDA S. HAMILTON, RPR
REPORTER - NOTARY PUBLIC

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11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

NAME	PAGE
LINDA KELLY, ATTORNEY GENERAL	4

P R O C E E D I N G S

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CHAIRMAN ADOLPH: Good afternoon. Our next testifier is the Attorney General of the Commonwealth of Pennsylvania, the Honorable Linda Kelly.

Good afternoon, General.

ATTY GEN. KELLY: Good afternoon.

CHAIRMAN ADOLPH: If you'd like to introduce the two gentlemen next to you, we would appreciate it.

ATTY GEN. KELLY: Yes. Seated at my -- at my left is Chief of Staff Bruce Beemer and to my right is Jim Ingalzo.

CHAIRMAN ADOLPH: Nice to have you.

I'd like to start out this budget hearing and we talked a little bit about it with the Secretary of Banking, and that's the recent settlement with the federal agreement with the nation's -- some of the nation's largest banks and, Pennsylvania will be -- will be receiving an estimated \$26 million. Is that correct? Or \$266 million.

ATTY GEN. KELLY: 266 million, yes.

CHAIRMAN ADOLPH: Okay. Could you explain

1 to the committee exactly what this settlement is all
2 about?

3 ATTY GEN. KELLY: Yes. The settlement was
4 the result of a collaboration between, as you
5 probably know, the committee of eight attorneys
6 general across the country, the Department of
7 Justice, the Department of Banking, and it came
8 about as a result of practices that were used in
9 mortgage foreclosure -- in mortgage foreclosures.

10 And the settlement was reached with an eye
11 toward giving some redress to homeowners who had
12 suffered at the hands of mortgage foreclosure
13 companies that engaged in the practice known as
14 robo-signing.

15 And robo-signing was essentially the
16 practice of putting through a large volume of
17 documents without really taking note of the
18 information that was contained in them and signing
19 them en -- en masse and the -- the -- it was just a
20 week or so ago that the settlement was entered
21 into.

22 Pennsylvania signed on, along with 49
23 other attorneys general office across the country.
24 We're one of the recipients, one of the
25 beneficiaries of the settlement, and a consent

1 degree is scheduled to be entered very soon in the
2 United States District Court in Washington, D.C.

3 CHAIRMAN ADOLPH: Thank you for that
4 explanation. This money, this \$266 million, do we
5 know whether that money will be received over
6 several years or will that be a lump sum statement?

7 ATTY GEN. KELLY: The money that --
8 that -- that we'll be receiving, it's basically
9 three buckets of money.

10 The money that most of us -- well, a lot
11 of people here in Pennsylvania are most concerned
12 with is 69 million, which we refer to as \$69 million
13 in hard money. That hard money is expected to be
14 deposited in our accounts shortly after the consent
15 degree would be signed.

16 The other two buckets of money which are
17 separate from the -- the 69 million, but which
18 comprise part of the 266 million, that's the total
19 settlement, will not be, as I understand it, to
20 date, and I -- you know, don't hold me to this -- we
21 will not receive it as quickly as we do that 69
22 million.

23 CHAIRMAN ADOLPH: Okay. And what are the
24 plans for this \$69 million? Do we have plans for
25 that? Does your office have plans for that?

1 Is there certain areas that you're allowed
2 to use the money for?

3 ATTY GEN. KELLY: Well, as -- as I said
4 before, my office and the people in the -- the civil
5 division that have been really part and parcel of
6 that settlement process from the very beginning have
7 made suggestions as far as how that money should be
8 used.

9 I think there's a consensus among us that
10 it most definitely should be used for the purpose it
11 was intended as far as the settlement is concerned
12 and to be used for aggrieved victims of foreclosure
13 and bad mortgage practices.

14 We're -- there's been discussion in my
15 office from the very beginning about some of that
16 money going to HEMAP, which some of you may be
17 familiar with. So we -- you know, we do not have a
18 definite allocation for the money set -- set aside
19 yet, but we're thinking about HEMAP and some other
20 areas.

21 CHAIRMAN ADOLPH: I've -- I've already
22 received some phone calls -- phone calls and letters
23 making that -- that suggestion. And it's been a
24 program -- it's been a pretty popular program and
25 considering the hardships that -- that exist out

1 there, I certainly would hope that this
2 administration and your office would -- would --
3 would consider putting some money into HEMAP.

4 I've been asked -- I've been asked and if
5 you would, Madam General, would you speak a little
6 louder?

7 ATTY GEN. KELLY: Oh, I'll try.

8 CHAIRMAN ADOLPH: Okay.

9 ATTY GEN. KELLY: Just give me a hand
10 signal if you can't hear me.

11 CHAIRMAN ADOLPH: Okay. It's -- it's a
12 big room. The acoustics are not great, and you need
13 to speak louder than the normal voice. Thank you.

14 Chairman Markosek.

15 REP. MARKOSEK: General Kelly, they give
16 me hand signals, too, occasionally. So -- but
17 anyway welcome and thank you very much for attending
18 here today.

19 ATTY GEN. KELLY: Thank you. It's my
20 pleasure.

21 REP. MARKOSEK: And if it's --if it's okay
22 with Chairman Adolph, I'm going to turn my time over
23 to Representative Cherelle Parker.

24 CHAIRMAN ADOLPH: Time well spent.

25 REP. PARKER: Thank you, Mr. Chair.

1 And good afternoon, General.

2 General, my question is in regards to a --
3 a major issue that's just not only present for the
4 Commonwealth but also in the -- in the nation.

5 Senator Casey was in Philadelphia a few
6 weeks ago to announce a bill that he introduced
7 making witness intimidation finally a federal
8 crime.

9 And -- and with that in mind, two line
10 items that I've been particularly interested in
11 since becoming a member of this committee have been
12 the witness relocation program and the gun violence
13 witness relocation program.

14 Now, I know this may sound repetitive for
15 some people, but the line items were funded from the
16 '10/'11 year, they were normally funded under two
17 lines, last year obviously both merged together, and
18 this year I've seen a proposed number of about
19 \$1,999,000 for it.

20 For the benefit of the public, can you
21 give us the counties in the Commonwealth of
22 Pennsylvania -- and I know there are only a
23 handful -- who benefit from this program?

24 Do you have a list of those counties? I
25 think -- is it more than five or eight? But it's

1 always interesting, because people normally think
2 they're only about two counties where DA's actually
3 utilize this program, and I'm -- I'm interested in
4 knowing for the record.

5 ATTY GEN. KELLY: Okay. And I'll try and
6 do that. You're talking -- you're referring to the
7 witness relocation program?

8 REP. PARKER: The witness relocation.

9 ATTY GEN. KELLY: Yes.

10 REP. PARKER: But there were two line
11 items. One was gun violence witness relocation, and
12 the other -- other was just simply witness
13 relocation. But the two were merged so that now
14 they're one line.

15 ATTY GEN. KELLY: Right. Okay. I'm going
16 -- I'm going to try to answer you generally and then
17 specifically with it.

18 REP. PARKER: Sure.

19 ATTY GEN. KELLY: I think that last year
20 there were 116 cases involving witness relocation
21 across the state. To give you the big picture, 85
22 of those relocations involved crimes that took place
23 in Philadelphia.

24 REP. PARKER: Eighty-five?

25 ATTY GEN. KELLY: Yes. Then there are, as

1 you -- as you indicated, a number of other counties
2 across the state where there were also witness
3 relocations.

4 The next largest county where that
5 occurred was Allegheny County where there were
6 seven.

7 REP. PARKER: Uh-huh.

8 ATTY GEN. KELLY: After that was Lancaster
9 where there were four.

10 REP. PARKER: Lancaster. Lancaster, four.

11 ATTY GEN. KELLY: Then there was -- I'm
12 just going to read these states [sic] if I could.
13 One in Washington County, one in Westmoreland
14 County, two in Somerset, one in Centre, four in
15 Dauphin, one in Chester, one in Montgomery, one in
16 Bucks, three in Delaware, one in Centre. And I
17 believe that's it.

18 REP. PARKER: Okay. Thank you. And I --
19 I appreciate you just reading that into the record.
20 Because, once again, it's an extremely valuable
21 program, prosecutors have told us across the
22 Commonwealth in their -- in their pursuit of justice
23 and without it many witnesses wouldn't have the
24 opportunity to come forward because they fear for --
25 for their lives.

1 And people often get witness protection
2 that we see on television as it relates to the
3 federal government and witness relocation confused.

4 In addition to that I want to --

5 ATTY GEN. KELLY: And if I could just
6 agree with you on that, Representative Parker. I
7 mean that's very true. This program is a really
8 valuable program.

9 And if you speak to prosecutors across the
10 state, I think that they would tell you to a man or
11 a woman that all of them have had cases that really
12 probably would have never been successful if they
13 hadn't been able to protect their witnesses and
14 enable them to testify.

15 And the witness intimidation aspect of it
16 that you mentioned earlier is also something that's
17 really significant in -- in so many areas and
18 particularly in -- in cases involving violent crimes
19 where people are loath to testify.

20 REP. PARKER: Uh-huh. Finally, I just
21 wanted to echo the chairman's sentiment regarding
22 the \$69 million from the National Mortgage
23 Settlement Fund.

24 The HEMAP program, its operations under
25 the leadership of Brian Hudson at PHMA, it's been

1 outstanding, and actually Pennsylvania was ahead of
2 the curve when many other states find -- found
3 themselves in crisis as it related to mortgages and
4 those people who had been victims of predatory
5 lending.

6 And I just found it really interesting
7 that much of the policy developed on the federal
8 level was actually based on Pennsylvania's HEMAP
9 program. So I, too, want to just note and be for
10 the record an advocate for as much funding as
11 possible to get to HEMAP so that we can help
12 Pennsylvania -- Pennsylvania homeowners who have
13 been victims of predatory lending. Thank you.

14 ATTY GEN. KELLY: Thank you.

15 REP. PARKER: Sure.

16 ATTY GEN. KELLY: And I would just put out
17 there, if any of you have any -- you know, any input
18 or any suggestions as far as using this money for
19 the purpose that it was intended, including HEMAP, I
20 mean I and my office, call Mr. Beemer here and let
21 us know if you have any ideas. We're -- we're --
22 we'd be happy to listen to you.

23 REP. PARKER: Thank you, Mr. Chair.

24 CHAIRMAN ADOLPH: Thank you.

25 Representative Mario Scavello.

1 REP. SCAVELLO: Thank you, Mr. Chairman.

2 And, hi, General. I'm right here.

3 ATTY GEN. KELLY: Hello.

4 REP. SCAVELLO: A couple of questions.

5 First, I want to jump on the bandwagon, and I agree
6 with the -- with the chair and also with
7 Representative Parker. That HEMAP program is an
8 absolutely fabulous program, and it's -- it's helped
9 numerous homeowners in my area.

10 So if we can get most of those dollars
11 into that program. I know the banking secretary was
12 here earlier and he agreed as well.

13 First, the tobacco settlement, can you,
14 please, give us an update of the status of the
15 mandatory arbitration with tobacco manufacturers.

16 In November 2011 the three largest tobacco
17 companies that were party to the master settlement
18 agreement exempted twelve states and four
19 territories from the arbitration that Pennsylvania
20 and 33 other states were still involved in.

21 Why were the other states exempted from
22 the arbitration and what --

23 ATTY GEN. KELLY: It's my understanding
24 that the participating manufacturers did not have to
25 explain why they exempted any of those states from

1 the arbitration proceedings. But that -- and those
2 companies have stated that the fact that a state was
3 dismissed doesn't necessarily mean that the -- the
4 state was diligent in -- in performing its duties.

5 As far as a -- a -- the status, the
6 Pennsylvania state specific hearing is scheduled for
7 November of 2012, but no decisions will be issued
8 from that panel until all the state hearings are
9 concluded.

10 State specific hearings will conclude, we
11 believe, in June of 2013. There will then be a
12 period after that for post-hearing briefing, and
13 it's probably very unlikely that that arbitration
14 will conclude before the summer of 2013.

15 So it's a long and an ongoing process.

16 REP. SCAVELLO: Any idea what the dollar
17 figure is that -- that -- it's being withheld
18 from -- as a result of the diligent enforcement
19 issues in the arbitration?

20 ATTY GEN. KELLY: I mean as you know,
21 these -- this case is really big-time litigation.

22 REP. SCAVELLO: Uh-huh.

23 ATTY GEN. KELLY: You know, it's very,
24 very time intensive and involves a lot of money. I
25 believe that \$41 million was withheld with respect

1 to the ongoing case back in 2003.

2 Then that payment, the diminished payment
3 involving that money was then paid in 2006, and I
4 believe that the total withheld to date is
5 approximately \$200 million -- \$200 million, and we
6 anticipate that another \$50 million --

7 REP. SCAVELLO: I see.

8 ATTY GEN. KELLY: -- will be withheld this
9 year.

10 REP. SCAVELLO: Wow. One last comment.
11 And it's -- it's been a big area -- and I'm starting
12 to hear about it from other members as well, and I
13 think it will affect us with this -- what we're
14 doing here with the settlement.

15 In some of these cigarette stores that are
16 popping up, they're -- they have these
17 cigarette-making machines. And in some places they
18 have employees actually making the cigarettes. Like
19 you put your order in and then you get a bag of
20 cigarettes.

21 First of all, it's manufacturing. It's --
22 and we're losing a tremendous amount of revenue
23 because there's no per-cigarette-per-pack tax on
24 those cigarettes.

25 It's one thing when you buy tobacco and go

1 home and, you know, you have the -- and you roll
2 your own cigarettes. But this is happening at a
3 business.

4 And it's affecting other businesses that
5 are doing things right within my county, and I'm
6 assuming it's happening throughout the state.

7 ATTY GEN. KELLY: You're -- you're right.
8 And it's -- you know, it's -- it's a relatively new
9 phenomenon. I think it's growing pretty quickly.

10 REP. SCAVELLO: Yeah.

11 ATTY GEN. KELLY: And it's occurring just
12 exactly as you described it. These quick
13 self-rolling cigarette machines that you go to and
14 get 200 or so cigarettes rolled in a -- in a couple
15 minutes.

16 So it is a problem. My office is aware of
17 the problem. As you know, we have some people in
18 our tobacco litigation unit that, you know, spend
19 their time exclusively on this case and on these
20 kinds of issues. Those people have been meeting
21 with the Governor's office to try and work out a
22 strategy of sorts for those cigarettes that are now
23 being produced in -- in that -- in that manner.

24 You know, and hopefully that we can do
25 something about that.

1 REP. SCAVELLO: Uh-huh.

2 ATTY GEN. KELLY: Obviously another
3 alternative would be some type of legislation.
4 We're not inclined at some point to go in that
5 direction. We'd like to do something --

6 REP. SCAVELLO: You might have the
7 authority. I don't know if you need the
8 legislation, personally.

9 ATTY GEN. KELLY: To do something --

10 REP. SCAVELLO: Yeah.

11 ATTY GEN. KELLY: -- with that. And --
12 and that's where we are right now. We're -- we're
13 very aware of it. We're working, you know, with
14 other people and hopefully we'll be able to address
15 that.

16 REP. SCAVELLO: Thank you.

17 ATTY GEN. KELLY: And it just goes to show
18 this tobacco legislation, it is -- it is time
19 consuming, resource consuming, it's ongoing, with
20 litigation constantly, hearings, arbitrations,
21 depositions, and the people in my office spend a
22 considerable amount of effort and resources to try
23 and, you know, get the money that we're entitled to
24 under that master settlement agreement and it's
25 ongoing.

1 REP. SCAVELLO: Yeah. Now, is it -- is it
2 -- if we don't enforce this, is it -- it can put
3 some of those settlement dollars in jeopardy, can it
4 not?

5 ATTY GEN. KELLY: The -- the -- these --

6 REP. SCAVELLO: These cigarettes they're
7 making?

8 ATTY GEN. KELLY: Well, I guess. You
9 know, everything is tied together in that
10 settlement.

11 REP. SCAVELLO: Yeah.

12 ATTY GEN. KELLY: So I'm sure in some way,
13 shape, or form somebody would draw the link --

14 REP. SCAVELLO: Sure.

15 ATTY GEN. KELLY: -- so that that would be
16 tied in to performance of our duties.

17 REP. SCAVELLO: Thank you very much.

18 CHAIRMAN ADOLPH: Thank you,
19 representative.

20 Representative Paul Costa.

21 REPRESENTATIVE PAUL COSTA: Thank you,
22 Mr. Chairman.

23 General Kelly, welcome.

24 ATTY GEN. KELLY: Thank you.

25 REPRESENTATIVE PAUL COSTA: Before I

1 started, I wanted to introduce myself. I'm actually
2 your state representative. Hopefully I can count on
3 your support in November.

4 ATTY GEN. KELLY: Okay. Nice -- nice to
5 meet you.

6 REP. PAUL COSTA: Your child predator
7 unit, does it do other work with -- beyond
8 Internet? And without telling us any trade secrets,
9 what other forms are you going after these child
10 predators with?

11 ATTY GEN. KELLY: Well, we just had a case
12 in -- back in western Pennsylvania last week which
13 was sort of a -- a combination of Internet predator
14 and actual physical predator where a man had
15 basically faked three Facebook identities.

16 He had -- he had assumed these three
17 personas, all of whom were -- became friends with a
18 series of young girls, 12, 13 or 14-year-old girls.

19 And it started out as a -- as an Internet
20 case where they were investigating -- well, I take
21 that back. It -- it was investigated on the
22 Internet.

23 But in addition to these personas that he
24 really formed these relationships with these young
25 girls, two of them actually physically met him, and

1 the case began when the parents of the girl -- one
2 of the girls who he made arrangements to meet at
3 their home called the police when he came to the
4 home to meet her and the case went backwards from
5 there.

6 It's -- the investigation started with the
7 parents calling the police because he was meeting
8 their daughter to have sex. Then we conducted an
9 investigation into the Internet aspect of it, came
10 up with these three Facebook personas.

11 So that's kind of a combination case that
12 our -- that our child predator unit would have.

13 One case that you're all familiar with is
14 the Jerry Sandusky case. That's definitely a child
15 predator case, but it's not really an Internet
16 predator case.

17 The child predator unit began, I think,
18 with the traditional kind of Internet predator in
19 mind, and that's the kind of cases that the office
20 has been developing recently.

21 The cases that -- some of the cases that
22 we have are not always involving the Internet. Some
23 still do. I see from -- just from the time that
24 I've been here, that in the past those cases that
25 were Internet predator cases were basically one

1 defendant, one victim.

2 As you can see with something like this
3 man that assumed three personas, there were seven or
4 eight female victims. So we have one case and seven
5 or eight victims. And the same type of multiple
6 victim occurs in the case like the Jerry Sandusky
7 case.

8 So it's a constantly evolving area. We're
9 trying to cover all the bases and -- and do the best
10 we can both with the Internet predator part of it
11 and the actual physical part of it.

12 REPRESENTATIVE PAUL COSTA: Thank you very
13 much.

14 Mr. Chairman, can I follow with another
15 question or do I have to wait for the next round?

16 CHAIRMAN ADOLPH: Since she's your
17 constituent --

18 REP. PAUL COSTA: Thank you.

19 CHAIRMAN ADOLPH: -- Representative, we
20 will make an exception here.

21 REPRESENTATIVE PAUL COSTA: I appreciate
22 that.

23 I want to follow up on the cigarette
24 machines. Yesterday we had the Department of
25 Revenue and basically were told the same story.

1 I have a constituent who has six tobacco
2 stores, and he has about 20 of those machines. Now
3 he believes that he's doing the right thing and he's
4 following the law.

5 All I would ask is that when we move
6 forward or if your office moves forward that you
7 keep us in the loop and -- so we can keep my
8 constituents in the loop so they know they are
9 following the law.

10 He doesn't want to break the law. He
11 wants to make sure he's doing everything right and
12 he believes that he is. And I would hate to see him
13 being punished if he was doing something wrong. So
14 just if you could help us out with that, we'd
15 appreciate it.

16 ATTY GEN. KELLY: I think that's a very
17 reasonable request.

18 REP. PAUL COSTA: Thank you very much.

19 And thank you for the latitude,
20 Mr. Chairman.

21 CHAIRMAN ADOLPH: Thank you.

22 Representative Millard.

23 REP. MILLARD: Thank you, Mr. Chairman.

24 General Kelly, I'd like to take you down a
25 path here with a constituent situation that I had

1 involving your office.

2 The Department of Revenue did an audit on
3 a constituent of mine and the end result of the
4 audit resulted in additional tax liability.

5 Now, to resolve this matter, my
6 constituents, a mom-and-pop organization who have a
7 small business, they hired JK Harris to prepare an
8 offer in compromise, and they did this at -- at
9 great expense. So much money, in fact, that it was
10 taken out of a monthly bank account.

11 So several hundred a month that resulted
12 in a tidy sum over the course of a year, year and a
13 half.

14 Bottom situation here was that JK Harris
15 did not render the service. They did nothing on
16 behalf of this mom-and-pop business, which the
17 longer it got drug out -- you understand how it
18 works with revenue. Time means money. And they
19 were assessed additional fees and everything else.

20 When my constituents were strung along and
21 the one contact that they had with JK Harris that,
22 oh, we're working on it, we're working on it, well,
23 it never got done.

24 Now, I got involved in this, obviously,
25 the frustration of the constituents that they

1 weren't getting the service, and I contacted your
2 office initially and I said, you know, who would I
3 talk to to have somebody go after JK Harris to see
4 why they clearly are not rendering a service, and I
5 was told by the Attorney General's Office that you
6 advocate for individuals, not businesses.

7 So I said, well, you know, who is -- who
8 would you recommend that I talk to? I never really
9 got the guidance that I was looking for.

10 To make a long story short here, it took
11 me numerous calls to JK Harris to find out that I
12 wasn't going to get anywhere. I didn't even know
13 where they were located. They've got a drop box
14 down here on Second Street. No physical presence in
15 Pennsylvania.

16 I ended up calling the congressman from
17 North Charleston, South Carolina to actually get a
18 number that I could call in to JK Harris to find out
19 how we were going to remedy this situation, because
20 the number that was listed on the Internet, you
21 might as well forget it. They weren't answering
22 you.

23 I was informed then by that congressman
24 that JK Harris was in bankruptcy. I called your
25 office back to let them know. They already knew.

1 And that had never been communicated to me. I
2 communicated it to your office.

3 So my question to you is, when a company
4 has established what amounts to a -- a shell
5 presence in Pennsylvania, what laws, what rules,
6 what methodology do you use to pursue a company like
7 that that is errant in the performance of their
8 duty?

9 And, secondly, I understand just by casual
10 conversation with your office that I believe that
11 you've been joined -- that you have joined in a -- a
12 lawsuit against JK Harris. If, in fact, you have,
13 I'd like to know the status of -- of your
14 participation and typically with bankruptcy, nothing
15 from nothing is nothing, but if there is something,
16 can my constituent count on the Attorney General's
17 Office to obtain funds in some sort of fashion that
18 would be returned to them?

19 ATTY GEN. KELLY: Okay. Well, I can tell
20 you this. I'm not familiar with the case that
21 you're talking about. I am not familiar with JK
22 Harris. And I'm not familiar with what -- whatever
23 was the -- the -- the explanation that was given to
24 you.

25 But I can tell you that I will take that

1 information and find out what I can and get back to
2 you. If this is some kind of -- this is sort of a
3 -- it may not be an active, ongoing case, but I
4 think it's tantamount to that.

5 So rather than comment on something that
6 is -- that is an ongoing kind of case or even if
7 there's a bankruptcy involved, we'll -- we'll get
8 back to you on that, representative.

9 REP. MILLARD: I appreciate that. And --
10 and forgive me if I've taken you to task for
11 something that may not necessarily be all a hundred
12 percent within your office.

13 But what I was looking for here, if it
14 wasn't, was some guidance and I -- I felt that we
15 fell pretty short of that. So thank you and --

16 ATTY GEN. KELLY: You're welcome.

17 REP. MILLARD: -- if you forward it to the
18 chairman, he'll share. Thanks.

19 Thank you, Mr. Chairman.

20 CHAIRMAN ADOLPH: Thank you.

21 Representative Samuelson.

22 REP. SAMUELSON: Thank you, Mr. Chairman.

23 I also wanted to concur that those funds
24 from the settlement with the mortgage companies, a
25 portion should be set aside for the HEMAP program.

1 I know there's been bipartisan support for
2 that concept today, and I appreciate your
3 suggestion, General Kelly, that we do that.

4 I -- I do want to note for the record that
5 that HEMAP -- HEMAP program actually has been -- has
6 been defunded with -- with state dollars. I -- last
7 year's budget there was an 81 percent cut. I know
8 many of us disagreed with that proposal. And then
9 in this proposed budget the Governor is proposing
10 total elimination of that line item, from two
11 million down to zero.

12 So out of necessity I agree that we should
13 definitely take some of that settlement money and
14 continue a program that has been very successful, I
15 believe, for 29 years.

16 Long term, I believe that's a one-time
17 settlement. I don't think that -- that 69 million
18 is one-time funding.

19 So after that is -- if that's used for
20 HEMAP, and after that is -- is fully used, we'll
21 have to look again to making a general fund
22 commitment to fund the HEMAP program. We've had
23 that for -- as I said, since 1982, through many
24 different administrations, and I would -- I would
25 say that we should look for a long-term funding

1 solution.

2 But I do appreciate this suggestion.

3 My question about the Attorney General's
4 budget is twofold. Two line items that have got a
5 lot of attention and a lot of discussion.

6 Actually it looks like there's less
7 funding than a couple years ago. I'm looking at
8 the -- the child predator interception unit, which
9 we just talked about, but the proposed budget has a
10 three percent cut in that line item.

11 And there's another line item for
12 investigations of Medicaid fraud. Now, that one
13 looks like it went down five percent last year. Up
14 four percent this year. So it's still just about a
15 percent less than it was two years ago.

16 So I guess my question is with those
17 diminished budgets, do you have enough resources to
18 adequately fund the child predator interception unit
19 and to act -- to adequately investigate Medicaid
20 fraud?

21 ATTY GEN. KELLY: And those are two very
22 important areas that -- in the Attorney General's
23 Office, both Medicaid fraud and the child predator
24 unit.

25 And I'll start with the Medicaid fraud

1 section. This year we opened up 174 cases, made 51
2 arrests, had 35 convictions, and entered into \$12.1
3 million in state civil settlements with drug
4 companies. 6.3 million was the federal share, 5.8
5 billion -- million being the state share, and 1.7
6 million in court-ordered restitution. There were
7 \$13.8 million in total Medicaid funds that we
8 recovered.

9 For the past 18 months we recovered over
10 \$16 million in Medicaid funds -- funds. So the
11 program clearly brings in exponentially more money
12 than it takes out of the state budget, and that is
13 money that goes directly -- that -- that 16 million
14 over 18 months and the 13.8 million over a year,
15 that goes directly into the -- to the general fund
16 fund.

17 So the Medicaid fraud unit in the Attorney
18 General's Office does yeoman work when it comes to
19 bringing revenues into the Commonwealth of
20 Pennsylvania.

21 It is essential to be able to continue
22 that kind of work and get that kind of return on the
23 state's investment, to have the essential monies to
24 fund attorney positions in that Medicaid fraud unit
25 and for them to have the resources to continue

1 their -- their -- their litigation in that area.

2 So I guess my answer to you would be, yes,
3 that it's very important we have that money, and
4 it's also important to the Commonwealth so that we
5 can bring in the kind of revenues that we've been
6 doing so -- so successfully in the past.

7 And it's a big chunk of money that the
8 Medicaid fraud section brings in is essentially what
9 I'm trying to say.

10 REP. SAMUELSON: And I might add, you're
11 recovering 13.8 million and that whole line item is
12 3.7 million to fund that unit. So you -- you're
13 certainly returning several times over.

14 ATTY GEN. KELLY: Four or five to one.

15 REP. SAMUELSON: Okay. My question was do
16 you have enough resources being basically level
17 funded or actually just a little bit less than 2
18 years ago to continue the -- the -- the excellent
19 work of that -- of that unit?

20 ATTY GEN. KELLY: We need the money --

21 REP. SAMUELSON: Okay.

22 ATTY GEN. KELLY: -- to continue. And --
23 and it's -- you know, it's sort of, you know,
24 symbiotic kind of thing because, you know, not only
25 is that line item cut, but because of the -- the --

1 the overall percentage of cut, you know, we are in a
2 position where we're going to have to cut if the --
3 if we receive the proposed budget, 67 more positions
4 most likely. And it's -- those 67 positions are
5 going to reach throughout the office, including the
6 Medicaid fraud section.

7 REP. SAMUELSON: And does that unit
8 prosecute large vendors or companies or does it
9 prosecute individual -- individuals who are involved
10 in Medicaid fraud or both?

11 ATTY GEN. KELLY: I think the answer is
12 both. Yes.

13 REP. SAMUELSON: All right. Thank you,
14 Mr. Chair.

15 CHAIRMAN ADOLPH: Thank you,
16 representative.

17 The next question is by Representative Tom
18 Quigley.

19 REP. QUIGLEY: Thank you, Mr. Chairman.

20 And thank you, General Kelly, for coming
21 before us today.

22 I had a question in light of a legislation
23 that was moved out of the committee. I sit on the
24 Human Services Committee, and we passed out Chairman
25 DiGirolamo's bill to create a statewide database for

1 doctors, pharmacists, and the Attorney General's
2 Office to monitor the prescription drug distribution
3 and potential misuse of prescription drugs.

4 And I know right now that your office has
5 the prescription monitoring program which collects
6 data from only -- I guess it's Schedule II drugs
7 right now.

8 I just want to know what -- how much
9 funding you receive to -- to administer that
10 program?

11 ATTY. GEN. KELLY: Do you have that?

12 I'm told that we have a system worked out
13 where we get the information on the Schedule II
14 drugs, but that there is no budget item for that.

15 REP. QUIGLEY: Okay. So there's no --
16 okay. No program. Okay.

17 What -- and then -- then in a broader
18 sense, I guess, that -- in some of the recent news
19 articles, even people appearing before the
20 committee, that -- I guess in conception the
21 Attorney General's Office would be in favor of this
22 type of proposal?

23 ATTY GEN. KELLY: I think in the past we
24 have been able to access that kind of information
25 and, yes, we would like to be part of continuing to

1 be able to do that, if that answers your question.

2 REP. QUIGLEY: Okay. So not -- as long as
3 you were involved in it. And obviously that's part
4 of what the legislation did, you know, I believe,
5 was to have the Attorney General's Office be the
6 law enforcement arm along with doctors,
7 pharmacists.

8 ATTY GEN. KELLY: Yes.

9 REP. QUIGLEY: Okay.

10 ATTY GEN. KELLY: Yes.

11 REP. QUIGLEY: Fine. Thank you,
12 Mr. Chairman.

13 CHAIRMAN ADOLPH: Thank you,
14 representative.

15 The next question will be by
16 Representative Mauree Gingrich.

17 REP. GINGRICH: Thank you, Mr. Chairman.

18 I'm over here, General -- General Kelly.
19 Thank you --

20 ATTY. GEN. KELLY: Sorry.

21 REP. GINGRICH: -- for you and your staff
22 being with us today.

23 I want to follow up a little bit on the --
24 the Medicaid discussion if you don't mind.

25 ATTY GEN. KELLY: Uh-huh.

1 REP. GINGRICH: Together with the
2 administration, we have placed a significant focus
3 on eliminating fraud along with you and the other
4 agencies involved in that. So we can create a
5 healthy and sustainable system that's there for the
6 most needy obviously.

7 Did you say that -- I was jotting down the
8 numbers, because I was impressed by those. So you
9 initiated -- and are we talking about the past year,
10 by the way? You initiated 174 cases?

11 ATTY GEN. KELLY: In calendar year 2011.

12 REP. GINGRICH: Okay.

13 ATTY GEN. KELLY: 174 cases were brought.

14 REP. GINGRICH: And then convicted 35?

15 ATTY GEN. KELLY: Correct.

16 REP. GINGRICH: And then out of that
17 restitution was 13.8?

18 ATTY GEN. KELLY: No.

19 REP. GINGRICH: Okay. Fill it out for
20 me.

21 ATTY GEN. KELLY: 1.7 million in
22 court-ordered restitution.

23 REP. GINGRICH: 1. -- okay. That makes a
24 lot more sense. What -- are there ways that --

25 ATTY GEN. KELLY: I'm sorry. The 13.8

1 million was -- was Medicaid funds recovered.

2 REP. GINGRICH: Yeah. Well, that's what I
3 was talking about, the Medicaid. So that's a
4 significant amount of money.

5 Out of those particular cases, I know we
6 were -- we removed a number of recipients from the
7 rolls recently for various reasons. Was any of this
8 a result of that, the fraud investigation result of
9 some of the recent eliminations of participants for
10 various reasons?

11 Did it then bring to light some of the
12 larger dollar amounts from the provider side,
13 service side, vendor side?

14 ATTY GEN. KELLY: And when you say recent,
15 what do you mean by recent?

16 REP. GINGRICH: Well, we had reports out
17 of the Department of Welfare within the past couple
18 months about -- a significant number, a hundred
19 thousand folks or so on.

20 Is there a connection between that -- most
21 of that was just checking eligibility, which should
22 have been done all along and wasn't. So -- but did
23 you come up with any of the bigger cases? Because
24 that's what I think we have a lot of trouble getting
25 at and is critically important, and the only way we

1 can make this a sustainable system is to make sure
2 it's well.

3 Is there a connection there?

4 ATTY GEN. KELLY: I'm not sure because of
5 the time frame that there is a connection to what
6 you're referring to. But I could be mistaken.

7 But it would seem to me that the figures
8 that we quoted occurred during calendar 2011 and
9 what you're referring to might have been a little
10 beyond that.

11 REP. GINGRICH: Might have been a little
12 before?

13 ATTY GEN. KELLY: Yes.

14 REP. GINGRICH: But at the same time
15 I'm -- I was curious if we were able to make any
16 connections there as we check on eligibility that
17 actually, from the provider side, things surfaced
18 that were pretty well in the shadows before?

19 ATTY GEN. KELLY: I'm told -- I'm told
20 that we're probably not able to make that connection
21 because a lot of the focus of the Medicaid people in
22 my office are on providers. And are you referring
23 to individuals rather than --

24 REP. GINGRICH: Yeah. If there was a
25 connection between the two. That -- that was -- was

1 my point.

2 ATTY GEN. KELLY: Well, I guess there's a
3 connection between individuals and providers, but
4 I'm not sure that it's the kind of connection
5 that --

6 REP. GINGRICH: Okay. That makes --

7 ATTY GEN. KELLY: -- you're referring to.

8 REP. GINGRICH: -- sense. I'm not
9 surprised you can't answer that. But is there any
10 other way we can help you help us make this system
11 as healthy as it can be for those who most need it
12 that we aren't doing now?

13 ATTY GEN. KELLY: Well, I think that, you
14 know, we do have to be vigilant and we have to
15 continue to do the kind of work that we've been
16 doing in the past.

17 And as we all know that if -- we need the
18 attorneys, we need the investigators to be able to
19 do that, and to be able to bring in the kind of
20 dollar figures that we've brought in in the past,
21 which I think, in turn, makes it a healthier system
22 of the kind that you're talking about.

23 So any financial assistance that we can
24 get to sustain that work would be great, and greatly
25 appreciate that.

1 REP. GINGRICH: Appreciate that. And I
2 know the Governor in the past in his former role has
3 always had a focus on the needs of the elderly and
4 protection and -- and well-being and so on. And we
5 all know that a significant amount of Medicaid
6 dollars go up -- goes towards that long-term care
7 issue. So I'm glad we can all work together on
8 that.

9 Thank you, General.

10 ATTY GEN. KELLY: I'm happy to. Thank
11 you.

12 CHAIRMAN ADOLPH: Thank you,
13 representative.

14 The next question will be by
15 Representative Glen Grell.

16 REP. GRELL: Thank you, Mr. Chairman.

17 Thank you, General, for being here.

18 I'm going to try to ask you one question,
19 but it might have a couple subparts, to not incur
20 the wrath of the -- of the chair.

21 I want to ask you about the program that
22 is the community drug abuse program. It's a grant
23 program that goes to local law enforcement and other
24 groups to assist with drug and alcohol prevention
25 and things like that.

1 I'm told that there were problems in the
2 current year with accessing that program. That
3 organizations that wanted to apply for grants were
4 not able to access the grant application six or
5 seven months into the current year.

6 And if you have to get back to me on this,
7 this is fine. But I'm wondering what -- what caused
8 that problem in the current year? What's the status
9 of that program for the rest of the current year?
10 Will the grants be awarded in a -- in a timely
11 basis? And what do you see looking forward to the
12 next year?

13 Is this a problem that was a one-time
14 thing that's been resolved or is there some other
15 attention that's needed to the program?

16 ATTY GEN. KELLY: Well, I can tell you
17 that -- that I think this program that you're
18 referring to are basically the small grants that go
19 out to communities, agencies, police departments,
20 schools, all kinds of --

21 REP. GRELL: Correct.

22 ATTY GEN. KELLY: Across the state.
23 They're usually -- often they're under a thousand
24 dollars. And I know that we have been actively
25 distributing those -- that grant money this year.

1 I've seen -- I've seen numerous amounts go out.

2 I'm not quite sure what it is you're
3 referring to. So if you could just educate me a
4 little bit about what the problem was that -- that
5 these people were not able to --

6 REP. GRELL: Well, I think the --the grant
7 application was not available or at least it wasn't
8 available on the website that it was supposed to be
9 available on until January of this year, even though
10 the grant period started last June.

11 ATTY GEN. KELLY: Yeah. You're -- you're
12 absolutely right. We may have to get back to you on
13 that.

14 REP. GRELL: Okay.

15 ATTY GEN. KELLY: And if that is the case,
16 I would apologize in advance if it was not up there
17 on the website as it should have been. But I don't
18 know the answer to that.

19 REP. GRELL: Yeah. If you can give us the
20 status of, you know, what the problem was, in fact
21 whether grants are being given, and whether groups
22 that may have missed out or may have been late --

23 ATTY GEN. KELLY: If there's something we
24 can do.

25 REP. GRELL: -- whether there's some other

1 opportunity.

2 ATTY GEN. KELLY: Sure.

3 REP. GRELL: And what the status will be
4 for next year.

5 ATTY GEN. KELLY: Yes. Because we like
6 to -- to -- to --

7 REP. GRELL: They're very important to the
8 local groups.

9 ATTY GEN. KELLY: They're very important.
10 And some of the things that they -- they do with
11 that money, it -- it helps out the local communities
12 quite a bit. So we're happy to, you know, get any
13 applications that we can. And I will check on that.

14 REP. GRELL: Okay. Thank you very much.
15 And if you can report it back through the chair.

16 Thank you, Mr. Chairman.

17 CHAIRMAN ADOLPH: Thank you. The next
18 question will be by Representative Scott Petri.

19 REP. PETRI: Thank you, Mr. Chairman.

20 And thank you for being here.

21 Well, I guess I'm going to do it again.

22 I'm going to ask a question I don't really want to
23 ask, but I have to.

24 What is the status of the Mcare
25 litigation? You know, we know what the first level

1 result was. And since this is an Appropriations
2 Committee and that could have an impact on the
3 Appropriations budget, maybe you can give us an
4 update on where that litigation lies and our
5 likelihood of success or failure as it may be
6 depending on how you view the result?

7 ATTY GEN. KELLY: If you would just give
8 me one moment.

9 REP. PETRI: Certainly.

10 ATTY GEN. KELLY: Apparently it was not
11 only a question you didn't want to ask, but maybe we
12 don't want to answer it.

13 REP. PETRI: Well -- and, you know, for
14 purposes of just laying a little bit of background,
15 you know, obviously I'm concerned as a member of the
16 Appropriations Committee that as we look at this
17 year's budget and next year's budget that we're --
18 if the result is going to be unfavorable to the
19 Commonwealth, meaning that we owe the money back to
20 the Mcare Fund and the doctors, that some of us
21 believe that we inappropriately raided, I'll use the
22 word raided, while that may not be the result we all
23 want to hear, if that's going to be the result, I
24 think prudent planning needs to dictate that we
25 better be prepared.

1 And, of course, my concern is that I think
2 the original amount was around 800 million and with
3 interest and all, who knows, that could be over a
4 billion dollars.

5 ATTY GEN. KELLY: I think I'm going to
6 request permission to get back to you on that.

7 REP. PETRI: That is more than acceptable,
8 and all I'm really looking for -- I'm obviously not
9 looking for any information that would be
10 inappropriate to be given, that might compromise
11 whatever defense we have in that case.

12 And I can't say that I'm familiar with the
13 substance. But I'm really looking for sort of a
14 summary of, well, this is where it is, this is when
15 we anticipate a decision might be received, so then
16 the Appropriations Committee can start to plan what
17 it is that we will have to do to respond to that.

18 Thank you.

19 ATTY GEN. KELLY: Thank you. And my
20 apologies.

21 REP. PETRI: I wouldn't apologize.

22 CHAIRMAN ADOLPH: Thank you. I know we
23 have the chief justices coming in later on. You may
24 want to ask them how that settlement is coming
25 along.

1 I don't think that's allowed, but it would
2 be an interesting question.

3 Madam General, thank you very much for
4 your testimony, for answering the questions. I know
5 there's some answers that you're going to get back
6 to us.

7 Referring to Rep. Petri's question, that
8 is very important to us because -- and I'm -- I'm
9 sure it's very important to the administration as
10 well.

11 ATTY GEN. KELLY: Uh-huh.

12 CHAIRMAN ADOLPH: We'd love to know what
13 the status there is.

14 So I want to thank you again, and I'm sure
15 you're going to be hearing from us in the next
16 several months in order to work out this budget.

17 ATTY GEN. KELLY: Okay. My pleasure.
18 Thank you.

19 CHAIRMAN ADOLPH: Thank you. And, by the
20 way, General, you have a good man behind you in
21 Mr. Ryan Booth. He worked for our House Republican
22 Judiciary Committee.

23 So we -- we don't pay as much as the
24 Attorney General's Office, so our loss is your
25 gain.

1 ATTY GEN. KELLY: And -- and it's our
2 pleasure to have him aboard. So...

3 CHAIRMAN ADOLPH: Thank you.

4 For the members' information, we're going
5 to have the open records testimony in several
6 minutes.

7 (The proceedings were adjourned at
8 3:27 p.m.)

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CHAIRMAN ADOLPH: Good afternoon.

Welcome.

The last testifier of the evening is Ms. Terry Mutchler, the executive director of the Office of Open Records, and with her today is also Mr. Nathan Byerly. Okay. Mr. Byerly is the deputy director of open records.

And good afternoon.

EXEC. DIR. MUTCHLER: Hello,

Mr. Chairman.

CHAIRMAN ADOLPH: Thank you for joining us.

EXEC. DIR. MUTCHLER: Thank you for having us.

CHAIRMAN ADOLPH: Would you like to make some brief opening remarks?

EXEC. DIR. MUTCHLER: Yes. That would be great.

CHAIRMAN ADOLPH: Okay.

EXEC. DIR. MUTCHLER: I won't -- I won't repeat all the testimony that we've submitted to you. But, first, we'd like to thank you for the opportunity to come and speak to the committee today.

1 The role that the Office of Open Records
2 has played in the last several years really speaks
3 to the great work that the legislature has done
4 in -- in deciding to create an office of this
5 stature.

6 And I can tell you that folks around the
7 world have contacted us, asking us to now help them
8 establish what they're calling the Pennsylvania
9 model of open records, everything from The Hague to
10 other state legislatures.

11 The Right-to-Know Law that you created has
12 had an impact on every aspect of Pennsylvania's --
13 Pennsylvanian's lives. We see that in the 1,800
14 appeals that have come to the office just in this
15 past year.

16 To be short and to the point, the Office
17 of Open Records has handled over 1,800 appeals of
18 denials of information to -- to our office.

19 We have over 200 current appeals in the
20 Supreme Court, the Commonwealth Court, the Court of
21 Common Pleas. We are under court order to conduct
22 hearings and have been doing that in addition to
23 court orders. In addition to that we have been
24 handling 400 of our own Right-to-Know requests
25 because we are subject.

1 Primarily we've done this with five
2 lawyers. The Office of Open Records cannot sustain
3 the pace that we have in this current -- with this
4 current workload. We -- since our -- since the
5 inception of the Office of Open Records has had --
6 we've had over 4,000 cases.

7 Currently, we're operating for the
8 remainder of this year with \$26,000 left, and one
9 thing that has even come to our attention is we are
10 not like most state agencies. We are independent,
11 and the Department of Commerce and Economic
12 Development has been a great help to us, but we are
13 also -- we're kind of a satellite office in this
14 way.

15 We pay to have our checks cut. We rent
16 our computers. We are now being charged postage,
17 and in most instances that would not be a problem
18 for most state agencies. But because of the size of
19 our office, the limited budget that we have, we
20 are -- we're splitting at the seams.

21 If the legislature chooses to add in the
22 state-related institutions, which we are in support
23 of, Penn State, Temple, Lincoln, and Pitt, it's
24 going to be an estimated thousand -- at least a
25 thousand cases a year for the Office of Open

1 Records, and there's no way we can sustain that.

2 And that's why in our opening remarks we'd
3 like to just point out that we are -- we know it's
4 difficult economic times. You have very difficult
5 decisions to make as to where -- to where the
6 appropriations lie. And we're asking for an
7 increase of -- of \$300,000 to bring our staff level
8 to an area that can support the -- the workload that
9 we have.

10 The net effect of not properly funding
11 this, to meet this workload, in our estimation is
12 that the Office of Open Records is going to have to
13 pick and choose which appeals to hear.

14 And I just want to give you a couple quick
15 examples. In the last year we've seen a lot of
16 financial reward come from people filing
17 Right-to-Know requests.

18 In the city of Philadelphia there were
19 thousands of dollars that were discovered through a
20 Right-to-Know request for attorneys' fees. Up to
21 almost \$50,000 a month, even though the particular
22 agency had -- had lawyers on board.

23 We saw a -- a family file a Right-to-Know
24 request to help supplement -- they knew that the
25 city was responsible for sewer backups that they had

1 in their -- in their home. The Right-to-Know
2 request records led them to discover that, in fact,
3 that was the case and the city was able -- the
4 homeowner was able to negotiate and -- and receive a
5 \$13,000 credit for -- for the issue that was -- that
6 was raised with the city.

7 A Right-to-Know request led to the
8 discovery of money being stolen from a youth
9 football league. There's countless cases where
10 money is being saved through this process.

11 The Office of Open Records is simply
12 asking for -- not simply asking, but we're asking
13 for help in being able to maintain the workload
14 that's put upon us and also that will be continued
15 to -- to increase if the state-related institutions
16 are covered under this law.

17 And we'd be happy to answer any questions.

18 CHAIRMAN ADOLPH: Okay. Thank you. I --
19 I understand the workload that you have, and we've
20 talked about this in the past, and appreciate the
21 good work that you do.

22 Trying to think out of the box a little
23 bit here. And how many states have these open
24 record laws?

25 EXEC. DIR. MUTCHLER: Every state in the

1 United States has a Right-to-Know Law or Freedom of
2 Information Act. There's only three states that
3 have a similarly situated office as the Office of
4 Open Records. That would be Illinois, Indiana, and
5 Connecticut.

6 And we are one of only three states in the
7 United States that have binding authority. When a
8 requester is denied access to records and then
9 they -- they come to the Office of Open Records, the
10 decision of the Office of Open Records is binding on
11 that agency and on the requester unless someone goes
12 to court.

13 So every state has a Right-to-Know Law.
14 Only a handful of states have an enforcement
15 mechanism and only three states have an enforcement
16 mechanism that is very similar to us.

17 CHAIRMAN ADOLPH: Okay. Has anyone ever
18 asked you is there a fee involved while filing
19 this?

20 EXEC. DIR. MUTCHLER: Yes. And -- and
21 we've -- we've examined this in previous years where
22 folks wanted to consider the option of citizens
23 paying a 10 or \$15 fee when they file an appeal to
24 the -- to our office.

25 Even if they filed a \$10 -- even if they

1 attached a \$10 fee, if you take the 1,800 appeals,
2 it would not really get us to even support a full,
3 you know, staff position.

4 CHAIRMAN ADOLPH: Right. Okay. On a
5 little bit of a policy note, I understand that
6 Senator Dominic Pileggi has a -- a bill in?

7 EXEC. DIR. MUTCHLER: Yes.

8 CHAIRMAN ADOLPH: Okay. Do you under --
9 are there any added changes that you would make to
10 that bill knowing that you -- you've -- you have
11 been the only executive director that this
12 Commonwealth has ever had?

13 EXEC. DIR. MUTCHLER: There's no standard.

14 CHAIRMAN ADOLPH: So there's no one else
15 to ask other than you. So would -- would -- is it
16 fair to say that when this bill goes through the
17 legislative process, is there any amendments that
18 you would be recommending during this process?

19 EXEC. DIR. MUTCHLER: Yes. And we've been
20 very fortunate to work very closely with Senator
21 Pileggi's office and they sought our input even two
22 years ago related to this legislation. And -- and
23 many of the changes that are in Senate Bill 247
24 reflect our -- our concerns and address many of the
25 issues that we've had.

1 So we're closely monitoring that and --
2 and feel very supportive of 247.

3 There's one angle that I think would --
4 that would weaken the Right-to-Know Law, and that's
5 still under discussion, related to third-party
6 contractors.

7 But we worked very closely with Senator
8 Pileggi's office and anyone who's -- who's asked us
9 for, you know, our view on strengthening this law.

10 CHAIRMAN ADOLPH: Would -- would one of
11 those recommendations that you'd be recommending
12 have anything to do with commercial establishments
13 asking questions of local tax offices, whether how
14 many pools you have in your -- in your township or
15 how many dog licenses you have out there by -- by a
16 commercial breeder or anything of that nature that
17 cost the local tax payer some money?

18 EXEC. DIR. MUTCHLER: Mr. Chairman,
19 there's no doubt that taxpayers bear the burden in
20 many instances of requests that come from commercial
21 requesters.

22 You can just take a look at our website
23 and you can see, for example, one of the highest
24 volume requests that occur around the state is a
25 company called Signature Solutions. It's a company

1 that is not within the Commonwealth, but they will
2 file and ask for tax records and -- and then, as I
3 understand it, take the information and sell it.

4 You're in a very difficult position, the
5 legislature as a whole, in that it's very difficult
6 to delineate a commercial use because what we've
7 seen in other states, when you try to say that
8 commercial users cannot use a Right-to-Know Law, is
9 you see situations where -- where then citizens,
10 they'll say, well, you're going to use this for your
11 blog and so that's a commercial use, or you're going
12 to use this as a -- as a newspaper or you're going
13 to be a law firm that uses this, and you walk a very
14 fine line between stunting capitalism and at the
15 same time trying to effect -- you know, effectuate a
16 situation where citizens aren't bearing the burden
17 of an overload of Right-to-Know requests.

18 The solution -- and you and I have
19 discussed this many times -- is a bifurcated fee
20 system, and the Office of Open Records, you know,
21 while we -- we sort of hate to see that happen, at
22 the same time there's a practical reality that --
23 that you can't really use a law like this for
24 commercial use in these times and expect taxpayers
25 to foot the bill.

1 And the federal Freedom of Information Act
2 sets up a bifurcated system so that if you are a
3 commercial user as delineated in the -- under that
4 law you pay a separate fee than if you were a
5 citizen or student or -- or, you know, a member of
6 the press.

7 CHAIRMAN ADOLPH: Yeah. Yeah. You know,
8 it's just -- you know, we have budgetary constraints
9 and I understand you're overloaded with -- with --
10 with work and we have, you know, some commercial --
11 out-of-state commercial businesses taking advantage
12 of a good law, okay, for their own benefit. And --

13 EXEC. DIR. MUTCHLER: I share that view.

14 CHAIRMAN ADOLPH: And -- I know you do.
15 And it would be nice that, you know, maybe between a
16 municipality and the open records office we could be
17 receiving some income from these companies.

18 Because literally sometimes these small
19 municipalities may spend a day in gathering that
20 information for those outside, out-of-state
21 businesses and -- and this isn't what the law was
22 written for. That was not the legislative intent.

23 And, you know, they're taking advantage of
24 us really, quite frankly, and I think when this bill
25 makes its way through the legislative process, I --

1 I really believe that this General Assembly has to
2 take a look at that.

3 Because the tax collectors and the --
4 throughout the Commonwealth of Pennsylvania,
5 they shouldn't -- they shouldn't be doing commercial
6 research for these companies.

7 Thank you.

8 Chairman Markosek.

9 REP. MARKOSEK: Thank you, Chairman.

10 Just briefly you had mentioned the power
11 that your office has, and you're only one of three
12 or four states that has the binding decision
13 process.

14 EXEC. DIR. MUTCHLER: Uh-huh.

15 REP. MARKOSEK: Where I guess what I'm
16 trying to get at is whether -- what is the internal
17 system by which you do that?

18 I mean who makes the decisions? Do you
19 make that decision or do you have a committee within
20 your office that makes it or how is that set up?

21 EXEC. DIR. MUTCHLER: The way it works is
22 the law provides that an appeals officer, who under
23 our structure is an attorney, reviews the cases that
24 come in and the appeals officer will then issue a
25 determination, that does go through us at times, to

1 determine whether the record is public or not
2 public.

3 The way -- to -- to give just a brief
4 overview, if a requester denies -- is denied a
5 request, they must send us certain paperwork. It
6 gets assigned by the deputy director to an attorney
7 in our office. They review the case, they apply the
8 law, and they issue the determination.

9 If -- if the agency or the requester
10 disagrees with the Office of Open Records, they have
11 the option of going to the Court of Common Pleas, if
12 you're at a local agency level, or the Commonwealth
13 Court if you are a state agency.

14 REP. MARKOSEK: Okay. Okay. So
15 internally it's -- it's one person that's been
16 assigned --

17 EXEC. DIR. MUTCHLER: Yes. And that --

18 REP. MARKOSEK: -- to that particular --

19 EXEC. DIR. MUTCHLER: It's -- it's one
20 person. But like, for example, today, we had --
21 it's still unbelievable that we still have so many
22 new cases, new issues that come before us.

23 And so today the entire staff sat around
24 at our weekly policy meeting and -- and one of the
25 attorneys will say, we have this really interesting

1 case related to a ballot, in this example. You
2 know, here's what I think the law says. Let's talk
3 about this. And we have -- we have an internal
4 discussion about it.

5 REP. MARKOSEK: Okay. Thank you.

6 EXEC. DIR. MUTCHLER: You're welcome.

7 CHAIRMAN ADOLPH: Thank you, Chairman.

8 Representative Gordon Denlinger.

9 REP. DENLINGER: Thank you, Mr. Chairman.

10 And good afternoon.

11 EXEC. DIR. MUTCHLER: Down at that end I
12 see.

13 REP. DENLINGER: Way down here. Kind of
14 putting on the civil libertarian hat here for just a
15 minute, it seems like you tread down the fine line
16 between privacy rights of citizens over and against
17 people's right to know and -- and what we define
18 that to be.

19 Since you have -- since you last met with
20 us, have there been any significant court decisions,
21 federal or state level, that have impacted your
22 operation either -- either way, providing -- opening
23 to providing more information or limiting that?

24 EXEC. DIR. MUTCHLER: Yes. There have
25 been. Because it's a new law, you know, the courts

1 have had an opportunity to weigh in heavily related
2 to this. And -- and we're still waiting for the
3 first decision from the Supreme Court of
4 Pennsylvania.

5 But there have been decisions that
6 impacted access to records. One of the most
7 significant decisions came last May when the court
8 -- when a -- when an inmate filed a Right-to-Know
9 request seeking information.

10 That inmate, the request was denied. He
11 appealed to us. And when he appealed to us, he just
12 attached a piece of paper and basically, in essence,
13 wrote appeal.

14 We accepted that as an appeal to the
15 Office of Open Records. That went to the
16 Commonwealth Court, and the Commonwealth Court said,
17 no, that's not enough under this law to get in the
18 door.

19 In addition to -- in addition to giving us
20 a copy of the request you made, Section 1101 of the
21 law requires two components, that the requester must
22 state the reason that they believe it's a public
23 record and they must refute any grounds that the
24 agency has asserted.

25 And so what the court said in that

1 instance was, you didn't have enough, Mr. Requester,
2 to get in the door.

3 In some instances that can be good, but in
4 the majority of instances what we see is it in
5 essence pits a -- a -- a citizen without a law
6 degree against, in most instances, the general
7 counsel of an agency that can cite 15 things.

8 So if they cite 15 reasons that you don't
9 get the record and the citizen would say, well,
10 look, it's salary information, we believe it's
11 public, if they don't address each and every one of
12 those 15, it doesn't get in the door.

13 That was a significant court case that --
14 that limited in some ways access.

15 There's been other court cases. One of
16 the most significant, and I would say is -- is among
17 the broadest in the United States for reaching
18 records of a private company, is a decision that has
19 come out in this law related to East Stroudsburg
20 University and whether or not the Right-to-Know Law
21 reaches records held by a private company, a
22 third-party requester, or someone that does -- has a
23 contract with a governmental agency.

24 Under that decision, if a private
25 corporation has a contract with a governmental

1 agency, all records related to that contract is
2 available.

3 And in the East Stroudsburg University
4 decision, it stemmed from a case in which a
5 university official was accused of selling sex --
6 trading sex for scholarships. Someone filed a
7 Right-to-Know request to get the traffic of e-mail
8 related to that and other information. The
9 university said that's part of the foundation.
10 That's a private organization not reachable. It
11 was, in fact, reachable and that has turned out to
12 be one of the broadest decisions in the United
13 States.

14 Most states in the nation do not permit --
15 do not -- they say that any record held by a private
16 corporation or a nonprofit is not reachable. But in
17 Pennsylvania, because of the Right-to-Know Law and
18 that decision, that is, in fact, reachable.

19 And it makes Pennsylvania's law one of the
20 strongest. It doesn't mean you get all records
21 related to that company. Just ones related to the
22 contract.

23 So there's been many decisions. A lot of
24 folks misunderstand that -- you know, they think
25 that you're going to get personnel records or you're

1 going to get -- in light of, for example, the Penn
2 State situation, that you're going to get those
3 investigative records. They're all protected under
4 this law.

5 REP. DENLINGER: So would you characterize
6 the body of case law from the beginning of time,
7 which isn't really that long ago, to this point as
8 having then broadened?

9 I think what I'm hearing you saying is
10 that it's broadened the rights of citizens right to
11 know some that way.

12 EXEC. DIR. MUTCHLER: I would say that the
13 court has taken a very pro open government approach
14 in most instances. There are some instances in
15 which we disagree with their holdings and feel
16 that -- that -- that there's been -- that they
17 haven't interpreted -- interpreted the legislature's
18 intent in some areas.

19 But as a -- as a broad scope of the, you
20 know, almost a hundred cases now that have come out
21 from the Commonwealth Court, I would say, yes, that
22 they have taken a pro open government interpretation
23 of this law.

24 REP. DENLINGER: The other side of that
25 can become public safety.

1 EXEC. DIR. MUTCHLER: Absolutely.

2 REP. DENLINGER: Have you been contacted
3 by -- I'm going to say the Pennsylvania State Police
4 or any other authority indicating that actions by
5 the open records office have, in fact, led to acts
6 of violence upon a person or persons?

7 EXEC. DIR. MUTCHLER: No. But what's
8 interesting about that for us is we are often trying
9 to -- to get agencies to work with us in situations
10 to protect the individual.

11 For example, we had a situation out in the
12 western part of the state where a fellow filed a --
13 a Right-to-Know request seeking what would otherwise
14 be public records of a teacher.

15 The -- the agency, the school district
16 ignored him, which gave him an automatic right to
17 appeal to us.

18 When it came to us, this bright, young
19 fellow attached a copy of the Protection From Abuse
20 order that the court had issued against him, but
21 because it was expired he said he was no longer a
22 threat to this individual.

23 The problem for the Office of Open Records
24 was we could not get that district to work with us.
25 I did everything short of sending a smoke signal to

1 say can -- you know, I'm assuming you're asserting,
2 you know, a safety issue here because we're not in a
3 position of asserting a -- a exception and the court
4 has made clear if the agency doesn't assert it at
5 the beginning, they don't get to assert it before
6 us.

7 So the safety issues, quite honestly, have
8 been the reverse. It's us trying to get an agency
9 to work with us to protect this -- the safety of a
10 citizen.

11 There's been a few times where the Office
12 of Open Records has missed the big picture, and --
13 and we've had -- we've had contact with people and
14 we have reconsidered decisions. Because obviously,
15 you know, we -- personal safety is -- is
16 paramount -- of personal paramount importance to me
17 and to the office.

18 REP. DENLINGER: Very good. Well, thank
19 you.

20 EXEC. DIR. MUTCHLER: Thank you.

21 REP. DENLINGER: I appreciate that.

22 Thank you, Mr. Chairman.

23 CHAIRMAN ADOLPH: Thank you,
24 Mr. Chairman.

25 Representative Mahoney

1 REP. MAHONEY: Thank you, Mr. Chairman.

2 Good morning or good afternoon. I don't
3 know which.

4 I just want to go back into history a
5 little bit to 2007 where Pennsylvania had probably
6 one of the worst open records laws in the country,
7 and we decided to do a new open records
8 legislation.

9 And I think the intent of the General
10 Assembly was to make one of the strongest open
11 records law we could in the country.

12 And by saying that, in your opinion, where
13 do you think we stand as far as the open records law
14 is and where do you compare in budgetary with the
15 top five percent? And where all your regulations --
16 are your -- your regulations that you created, are
17 you up to snuff with those?

18 EXEC. DIR. MUTCHLER: Well, first,
19 representative, thank you for -- giving us the
20 opportunity today. You've been a tremendous help to
21 our office in the past, and -- and we look forward
22 to that continued support.

23 The Office of Open Records and the
24 Right-to-Know Law I think is one of the strongest in
25 the United States, but an independent reviewer,

1 which was the national -- the federal Freedom of
2 Information Coalition out of the University of
3 Missouri previously had Pennsylvania ranked at 49th
4 in the nation.

5 REP. MAHONEY: Yes.

6 EXEC. DIR. MUTCHLER: They've since moved
7 us to 25. And as I understand it, when they do
8 their next one, we -- we may even be in the teens.

9 So I think it's a very strong law. I
10 think the legislature should take a great deal of
11 credit for creating that.

12 I think that there is some work to do on
13 -- on -- on -- there's some area of the law that
14 make Pennsylvania's some of the worst in the
15 nation. The investigative exception, most states
16 say that once an investigation is closed you get
17 some information. Pennsylvania says that when an
18 investigation is closed in perpetuity you never get
19 information, and that's kind of a weak spot.

20 So I think that we are moving definitely
21 in the right direction. I think that we stand --
22 we're a very strong agency and have a strong law to
23 support it. We run the risk of failing for -- for
24 lack of staff at this juncture.

25 As to the regulations, the -- the Office

1 of Open Records, the law permits us to promulgate
2 regulations or, in the absence of that, to have
3 interim guidelines.

4 The office, since before the law took
5 effect, had interim guidelines. The issue that we
6 ran into is that after we had regulations
7 promulgated, because the office is independent, most
8 state agencies would go to the Office of General
9 Counsel and have their regulations reviewed, then
10 have them reviewed by the Office of the Attorney
11 General before going to the regulatory commission.

12 Because we're this unique animal, so to
13 speak, the OGC previously would not take a look at
14 the regulations. And -- and to their credit it was
15 basically not to, you know, have a hand on the
16 scale. But that then triggered at the time the
17 Office of the Attorney General saying we don't
18 really want to do this until such time as OGC takes
19 a look at it. And so those regulations have been
20 sitting.

21 Now, we still operate under your interim
22 guidelines which gives process and form and
23 structure. We had planned to go back to the table
24 to solve that, but then 247 came along and it would
25 have been a waste of taxpayer money in our view to

1 push for the regulation when we're going to have a
2 rewrite that would have required us to do a whole
3 new regulatory rewrite.

4 So we have the interim guidelines. The
5 law gives the effect -- excuse me -- the effect of
6 having those interim guidelines in play. That's
7 what we abide by.

8 As to the permanent regulations, I think
9 that we have to wait for 247, or whatever rewrite is
10 going to happen, before we move to -- to the
11 regulatory commission.

12 REP. MAHONEY: You mentioned three other
13 states. I think Connecticut, Illinois and --

14 EXEC. DIR. MUTCHLER: Florida is another
15 one. Indiana.

16 REP. MAHONEY: The staffing that they had
17 in their open records compared to Pennsylvania and
18 the budgets. Do you know those answers, what they
19 had?

20 EXEC. DIR. MUTCHLER: I do. And
21 Connecticut is the clear leader in United States
22 with Right-to-Know and Freedom of Information.
23 They've been doing it for over 30 years.

24 Each year they've had about a thousand
25 cases on their docket. They have 22 staff members

1 and they have double the budget. They have a \$2.4
2 billion budget and last year they only had -- they
3 had less than a thousand requests.

4 So they have the longevity history of
5 being able to build that office into double the
6 staff and -- and that situation.

7 Florida has the luxury of -- their
8 enforcement mechanism comes through the Office of
9 the Attorney General, as does -- as does Illinois,
10 and so each of those attorneys general can dedicate
11 a significant amount of money to fluctuate with the
12 case load.

13 So if they have a lot of cases they get
14 the staff, and they -- you know, to -- to handle it,
15 and then it it wanes those staff are used in
16 other -- in other departments.

17 So -- so the bottom line picture is --
18 particularly with Connecticut is you have double the
19 staff, double the money, and half the appeals. And
20 also they don't do the other things that -- that the
21 Office of Open Records statutorily is required to
22 do, i.e., hearings and -- and the mediations.

23 They might do hearings but not the
24 mediations and the other -- the training that we're
25 required to do.

1 REP. MAHONEY: So one more question. If
2 you don't receive the \$300,000 increase for your
3 office, where do you think we'll be in two years
4 from now as far as transparency and openness?

5 EXEC. DIR. MUTCHLER: I think that we
6 will -- I would like to believe that we would not
7 step backward, and that is because of the effort,
8 when I look at the staff I have and their
9 willingness to work literally 14 and 16 hours a day
10 to keep up with this pace load so we don't deem
11 deny. You know, it's my firm belief that we will
12 do -- we will do our best.

13 But the reality is you can't -- you can't
14 keep that kind of pace. And if you add in the
15 state-relateds, I just do not see -- I see -- I see
16 the Office of Open Records being in the position of
17 having to decide which cases to hear, having that
18 revert back to the old law where if a citizen wants
19 a record they have to go to court, and I think
20 that's a -- that is a -- that is not a situation
21 that I would like to see the Commonwealth of
22 Pennsylvania in.

23 And I think that it would reflect
24 negatively on the great work that the legislature
25 has done in strengthening this law. I think it

1 would turn the clock backward in a way that we don't
2 want.

3 REP. MAHONEY: Thank you very much.

4 Thank you, Mr. Chairman.

5 CHAIRMAN ADOLPH: Thank you,
6 Representative Mahoney. Thank you for the work and
7 interest that you have in that issue.

8 Next question is by Representative
9 Scavello.

10 REP. SCAVELLO: Thank you, Mr. Chairman.

11 And good afternoon, Director Mutchler. I
12 don't know if the folks know, but she -- she worked
13 at our local newspaper in Monroe County for a
14 while.

15 EXEC. DIR. MUTCHLER: A long time ago.

16 REP. SCAVELLO: A long time ago.

17 EXEC. DIR. MUTCHLER: Now you're dating
18 me.

19 REP. SCAVELLO: It's unfortunate what has
20 happened to the paper since then. Let me tell you
21 they've cut a lot of -- tremendous cutbacks.

22 My question, you've answered part of it
23 and, you know, in the last four -- just the four
24 years that we've had the open record laws, the four
25 state-relateds have received over \$2 billion.

1 And I asked them today would they support,
2 you know, compliance with the open records law and,
3 of course, they -- the gentleman from Pitt puts a
4 whole stack of papers, this is what I -- you know,
5 it's over \$2 billion in -- in monies that they're
6 receiving from the state. They should -- I
7 personally think that they should be open to
8 those -- those records.

9 Am I correct? And you -- you agree?

10 EXEC. DIR. MUTCHLER: Well, I will be
11 candid with you. I -- as a personal matter, I share
12 that view. I think where there is taxpayer money
13 there should be taxpayer transparency.

14 But one thing that has come up within our
15 office, and I think it's an interesting question for
16 the legislature and that is this. If you take a
17 look at the -- the amount of taxpayer money that --
18 that goes to the institutions and -- you know, and
19 having met with some of them already, they would
20 argue that -- that -- -- or assert, not argue, but
21 they would assert that that's only a small portion,
22 and that -- that -- you know, so what it leaves the
23 legislature in the position of is determining how
24 much is -- how much transparency is \$2 billion worth
25 or, you know, a quarter of a billion dollars'

1 worth.

2 The reality is that there are only three
3 states in the United States, Delaware, Alaska, and
4 Pennsylvania, that permit universities that receive
5 any taxpayer money from not having public
6 transparency and -- and being subject. So, in other
7 words, if you take a look at the University of
8 Wisconsin or if you take a look at the University of
9 Illinois, or Oklahoma State, all of their records
10 are subject to the law.

11 It doesn't mean you're going to get all
12 the records.

13 REP. SCAVELLO: Uh-huh.

14 EXEC. DIR. MUTCHLER: It just means that
15 you start with the premise that the record is open.
16 Delaware, Alaska, and Pennsylvania carve out the
17 exception for state -- what's the equivalent of
18 state-related institutions and they are not.

19 You know, it's -- the Office of Open
20 Records, our entire mission is about open records.
21 And so it is our firm belief that if you have
22 taxpayer money involved that you should have
23 transparency.

24 But the good news for us is that's above
25 my pay grade and you guys have to decide that. And

1 once you decide it, then we'll implement whatever
2 you want.

3 REP. SCAVELLO: I wish I had that
4 information earlier when I brought the question up
5 that we're one of three states that doesn't. It's
6 something that we really need to look at.

7 Thank you for the job that you and your
8 staff are doing for the Commonwealth.

9 EXEC. DIR. MUTCHLER: Thank you very much.

10 CHAIRMAN ADOLPH: Thank you.

11 Representative Paul Costa.

12 REP. PAUL COSTA: Thank you,
13 Mr. Chairman.

14 Thank you for being here today.

15 I want to follow up on Chairman Adolph's
16 comments about our local municipalities and the
17 impact it's having on them.

18 EXEC. DIR. MUTCHLER: Uh-huh.

19 REP. PAUL COSTA: I come from Allegheny
20 County. We have 131 municipalities, and a lot of
21 them only have one person working in the office.

22 EXEC. DIR. MUTCHLER: Yes.

23 REP. PAUL COSTA: And they seem to be
24 getting a lot of requests from out-of-state
25 companies fishing, and they complain to us all the

1 time about that.

2 And I'm glad to hear your response to
3 Chairman Adolph that we -- definitely we need to
4 work on defining that line on how we can get the
5 information out to the people that need it,
6 legitimately need it, and not so much the for-profit
7 organizations.

8 And I was glad to hear your response to
9 that.

10 EXEC. DIR. MUTCHLER: Well, again, I share
11 that view, and I -- I particularly believe that
12 townships suffer the most, quite candidly, under
13 this law and -- and I say suffer.

14 I mean it's terrific to have transparency;
15 but when you have a township secretary that's got
16 ten tasks and a Right-to-Know request that requires,
17 you know, 50 hours, we understand that.

18 And -- and, you know, I will tell you that
19 one of the -- one of the most difficult days for the
20 Office of Open Records was ordering the Department
21 of -- PennDOT to release -- I think it was 12
22 million records. Because we had no -- there was no
23 way around it in the law, and yet the practical
24 reality is, seriously, we're going to have to go
25 through 12 million records? This was at the

1 beginning.

2 And -- and so there has to be a balance.
3 The problem is -- quite candidly, is you have less
4 than sane people on both sides of this at times, and
5 you have citizens and members of the public who are
6 convinced that each and every one of us in this room
7 is a criminal, but on the flip side you have public
8 officials that don't like the public and think that
9 the public don't have a place at the table.

10 So you have to strike the balance and --
11 and -- and that's where it becomes extremely
12 difficult. Because if you -- if you carve out an
13 exception for a township who suffers under this law,
14 believe me, you know, I've seen request after
15 request come through where you learn a great deal
16 about the operation of government and, in some
17 instances, the corruption of government.

18 So that's the -- that's the balance that
19 we have to try to strike and try to -- try to find a
20 way to separate out the commercial requester,
21 definitely, but then also it's not just the
22 commercial requester, if you want to be candid about
23 it, it's -- a lot of times we get folks -- there was
24 a guy in -- in the central -- the south central part
25 of the state who filed 300 Right-to-Know requests in

1 three months.

2 And what I personally want to say to him
3 is get a hobby, but what I realize is this is his
4 hobby. And then you -- you dig a little deeper and
5 you -- you find out that he lost an election and so
6 now he's just -- you know, he's trying to kind of
7 get back at it.

8 But those are the -- those are -- in truth
9 they are the minor cases, but it does reflect a
10 bigger issue.

11 REP. PAUL COSTA: You're right. And it --
12 it takes up a lot of time.

13 EXEC. DIR. MUTCHLER: Yes.

14 REP. PAUL COSTA: And we've put a large
15 burden on our small municipalities. And like I
16 said, I look forward to working with you to try and
17 define that line where you can help them out.

18 So thank you.

19 EXEC. DIR. MUTCHLER: Uh-huh.

20 CHAIRMAN ADOLPH: Thank you. Thank you.
21 Representative Mauree Gingrich.

22 REP. GINGRICH: My turn. Are you tired of
23 us yet?

24 EXEC. DIR. MUTCHLER: No. But I'm just
25 trying to figure out where everybody is coming

1 from. So like I'm looking over here, but then I see
2 you over there. So...

3 REP. GINGRICH: It keeps you awake, too.

4 EXEC. DIR. MUTCHLER: It does. It does.

5 REP. GINGRICH: Thank you, Mr. Chairman.

6 And thank you for going through this
7 important information. You have a very busy office
8 clearly and a very important office for
9 Pennsylvania's taxpayers. So we're all working
10 towards the same goal.

11 My two concerns were taken care of in
12 prior discussion and unfortunately there's no magic
13 solution to either one and that is the commercial
14 misuse, is -- is what I call it, because I see a
15 tremendous amount of that, in a growing district
16 like mine where there's a lot of home building going
17 on and filing for information on permits.

18 EXEC. DIR. MUTCHLER: Yes.

19 REP. GINGRICH: So the window people can
20 go sell them windows. Takes a tremendous amount of
21 time from the staff.

22 And that leads me to ask the question
23 about the fees. The law permits your office to set
24 the fees. Do the fees we charge for duplications
25 actually pay the cost, do you think?

1 Is there some discussion on maybe making
2 that more equitable?

3 EXEC. DIR. MUTCHLER: The -- the cost is
4 not covered by duplication --

5 REP. GINGRICH: I wouldn't think so.

6 EXEC. DIR. MUTCHLER: -- quite simply.
7 The Office of Open Records has the authority to set
8 duplication fees and copy fees, and there's been a
9 great discussion, and candidly a disagreement, about
10 whether the Office of Open Records should permit
11 labor fees.

12 And there the -- the -- the -- in the
13 past, you know, general counsel has wished for us to
14 be able to charge agencies to charge a research fee
15 so that they could charge certain amounts of dollars
16 an hour in -- in doing that.

17 In my experience around the country, what
18 I have seen is that you get into situations where
19 that's another way to block information. So you
20 get -- you get high costs to keep the average
21 citizen out.

22 It's my belief that the Chairman is on the
23 right path here by -- by carving out a commercial
24 use fee, and we've -- we've internally discussed
25 whether or not the Office of Open Records should

1 just go ahead and establish that under the fee
2 section that we have the authority to do, to say if
3 you are a commercial user, you are going to pay
4 labor fees and you are going to pay a higher fee for
5 copying.

6 The reason that we established 25 cents
7 per page was out of court cases in which the courts
8 have said that there's a reasonable fee for a
9 citizen, 25 cents a page.

10 Most -- some people would argue that
11 that's not reasonable because it only costs about a
12 nickel, but we left it at a quarter per page to try
13 to subsume some of that.

14 But the -- the plain spoken reality is a
15 quarter a page wouldn't even come close to covering
16 the amount of time and effort that goes into it.
17 But the concern, of course, is -- and what taxpayers
18 say, and I share this view, is taxpayers are already
19 funding that office. And so this is where you get
20 into a -- a tough decision making process.

21 The Office of Open Records supports a
22 commercial use fee and -- and we think that that
23 might solve some of the -- it will solve the
24 Signature Solution situation in one regard.

25 I think you'll get some push back from --

1 from entrepreneurs who want, you know, to take
2 information and -- and -- and make a buck basically,
3 make a living.

4 And you'll also -- I think though you'll
5 still have unsolved the issue of disruptive
6 requesters, like the fellow that filed 300 requests,
7 and I think that's solvable by having a better
8 definition of -- of what's a disruptive request,
9 which I think 247 would handle.

10 I -- when I first took this office, I
11 asked -- I asked all the agencies, organizations
12 like townships' association, county commissioners,
13 to submit to us what they would propose as a fee.
14 No one took us up on that.

15 And so we -- I decided to start at ground
16 zero and say, okay, we're going to follow the
17 courts, throw out, you know, a quarter a page, not
18 have labor fees.

19 We are willing to reconsider that. It --
20 I'm -- but with this legislation that was here, I
21 felt that it would be inappropriate to kind of
22 overstep the legislature in -- in its intent.

23 But I share that view and I'm -- I'm --

24 REP. GINGRICH: If you can make it
25 better --

1 EXEC. DIR. MUTCHLER: -- certainly open.

2 REP. GINGRICH: -- overstep us. That's
3 okay. We need it better.

4 EXEC. DIR. MUTCHLER: Well, we're like
5 guys. We suffer from only one group of the people
6 think that it's making it better. So, you know.

7 REP. GINGRICH: May I ask? I think you
8 said there were -- out of 4,000 Right-to-Know
9 requests, there were 1,800 appeals. How many were
10 reversed?

11 EXEC. DIR. MUTCHLER: The -- the --

12 REP. GINGRICH: Or a percentage or how --
13 however you record those.

14 EXEC. DIR. MUTCHLER: The numbers that
15 have come into the Office of Open Records have been
16 4,000 since the inception.

17 REP. GINGRICH: Uh-huh.

18 EXEC. DIR. MUTCHLER: We had 1,800 appeals
19 last year come to us. I can give you these
20 statistics, however, thanks to the good work of
21 Lauren Steele who put all this together for me.

22 We actually had 1772 appeals filed in the
23 previous year. We tried to get 1776 for effect, but
24 it -- it -- it didn't happen.

25 Of those 228 were granted. In other

1 words, we said in those that -- that -- that the
2 agency was wrong and we said 228 should be granted.
3 Ninety-seven were partially granted. Five hundred
4 fourteen were dismissed. In other words, for --
5 either they didn't have enough information to get in
6 our door or -- or there was a reason that we
7 dismissed it. We denied 302.

8 I'll provide all this to your office
9 afterward in a nice pie chart. One hundred
10 sixty-three were withdrawn. The agency and
11 requester worked it out. Two hundred seventy-six
12 were insufficient. And -- and that meant that they
13 didn't have enough information to come to us.

14 What's interesting about these statistics,
15 of the 1772, the majority are still citizens. Over
16 71 percent of the requests that have come to the
17 Office of Open Records were from everyday citizens.
18 22 percent were from government officials.

19 And, very interestingly, in Harrisburg,
20 they were not really releasing financial information
21 to the authority, and so the authority -- it's
22 highly unusual in this situation, but the -- but
23 the -- but the government officials used the
24 Right-to-Know Law to get the information that they
25 needed. So we see a lot of that as well in that

1 regard.

2 But it is clearly a citizen-driven law.
3 Most of these are citizens that are asking and
4 not -- not media and not even commercial users.
5 Although when you get the commercial user, it's --
6 it's overwhelming.

7 REP. GINGRICH: Right. And that's what a
8 lot of us hear about.

9 My final question relates to the training
10 that the law requires you to do out of your office
11 as well.

12 EXEC. DIR. MUTCHLER: Yes.

13 REP. GINGRICH: I'm curious about how you
14 manage that, how you implement it and I ask that
15 mainly because you talked about sending up a smoke
16 signal before. I thought there ought to be a better
17 way to do that.

18 EXEC. DIR. MUTCHLER: Yeah.

19 REP. GINGRICH: And could we maybe be
20 helping a lot of our subdivisions, political
21 subdivisions, and those that are suffering most?
22 Through training would we be able to enlighten them
23 or equip them better to do a good job at the front
24 end?

25 EXEC. DIR. MUTCHLER: That's -- that's

1 what we find. We find out that when we can get out
2 into the field and train them that -- that we see --
3 not at the beginning but then a few weeks out we'll
4 see a diminished amount of appeals.

5 The Office of Open Records has done over
6 500 trainings around the state and we partner and
7 invite -- particularly, we've done this several
8 times in -- in Representative Mahoney's district
9 where he called together his local officials and
10 citizens and said, you know, we're going to have
11 this training and -- and the -- and the Office of
12 Open Records comes out and -- and he hosts the
13 training and we train them. And we get a lot of
14 good feedback from that.

15 The reality is that now, with the -- with
16 the number of appeals, we've cut back on trainings
17 because, with only \$26,000 left to get us through
18 the end of the year, we can't do it.

19 And also with the -- if you take a look at
20 our case load, at any given time, any one of these
21 lawyers has, you know, up to 40 cases and that
22 doesn't count the hearings, the mediations, and the
23 brief writing and the appearing in court.

24 The deputy director and I are both
25 attorneys and we do double duty appearing in court

1 all the time.

2 We share your view about training. We
3 can't -- without the additional \$300,000,
4 something's got to give and -- and -- and so we --
5 we need to factor that in, to have the staff to be
6 able to be on the road and do these.

7 We do them, but it's -- it's -- you know,
8 it's hard.

9 REP. GINGRICH: I think that's a great
10 investment. I was going to give you a map to
11 Lebanon County and have you come down --

12 EXEC. DIR. MUTCHLER: Oh, we've --

13 REP. GINGRICH: -- as soon as possible.

14 EXEC. DIR. MUTCHLER: We've -- we've --
15 we've been in Lebanon once or twice. Not recently.
16 But we would -- we would welcome that. We did it at
17 the very beginning.

18 We sort of felt like, you know, roadies at
19 the beginning of this, you know.

20 REP. GINGRICH: Well, it gets more
21 complicated as time goes on. As people --

22 EXEC. DIR. MUTCHLER? It does.

23 REP. GINGRICH: -- realize there's access
24 to this --

25 EXEC. DIR. MUTCHLER: Yeah.

1 REP. GINGRICH: There's -- there's great
2 chances for use and there are some chances for
3 abuse. So --

4 EXEC. DIR. MUTCHLER: Yes.

5 REP. GINGRICH: -- thank you so much for
6 your input here.

7 EXEC. DIR. MUTCHLER: Thank you.

8 CHAIRMAN ADOLPH: The \$26,000 that you say
9 you have left in your checkbook to make it to June
10 30th, does that include salaries?

11 EXEC. DIR. MUTCHLER: Yes. Our salaries
12 -- no. Our salaries are covered.

13 CHAIRMAN ADOLPH: Right.

14 EXEC. DIR. MUTCHLER: We have 26,000 left
15 in operating expenses. And now, starting this year,
16 that money is going to go out the door because now
17 we're paying our own postage. We're paying to have
18 our checks cut. We're paying, you know, the rental
19 of our computers. We're still in temporary office
20 space.

21 And we have to -- you know, part of this,
22 the money that we have set aside to use, is to move
23 us to a permanent office location.

24 And it's -- you know, and I know that you
25 and I have discussed this. I mean one of the ways

1 around that is, you know, I let -- I let each of my
2 staff work remotely one day to try to compensate for
3 this. And I think it's been a good move and -- and
4 I -- and we -- we get -- I get more work out of
5 them.

6 But at the same time, quite candidly,
7 while we respect the amount of work that the
8 legislature has done in strengthening this law, we,
9 in the words of our deputy director, are at a
10 crossroads and we have to decide -- you have to
11 decide what you want next and what you want it to
12 look like.

13 And if you want us to be a citizen
14 advocate, we can do that. If you -- if -- if we
15 continue as a quasi-judicial agency that the courts
16 have said, we can't do that on this funding.

17 And like, for example, we were -- we're
18 under court order to conduct a hearing, and so we're
19 conducting a hearing to -- to take a look at these
20 records. State agency that's involved, it's already
21 going to be a three-day hearing. That's going to be
22 about \$6,000. You know, I'm seeing this 26 go away
23 very, very fast.

24 And -- and so we -- we took a proactive
25 cut at the beginning by saying it would take 1.5

1 million to properly fund this, but we were willing
2 to work with the administration at that juncture to
3 say, okay, well, we're not fully up and running.
4 Keep us at the 1.1. We'll work with you.

5 But there was -- there was a return, that
6 that was to come. It was one of the biggest
7 mistakes I've made as executive director, was to not
8 just stick to that. But -- but I learn.

9 But that's why we're coming back. And
10 it's -- it's -- I like to phase this as not asking
11 for an increase but -- but to compensate for the cut
12 we already took. So...

13 CHAIRMAN ADOLPH: Thank you.

14 Representative Samuelson.

15 REP. SAMUELSON: Thank you, Mr. Chairman.

16 And thank you for your testimony.

17 EXEC. DIR. MUTCHLER: Thank you.

18 REP. SAMUELSON: I'm thinking about your
19 comparison to the state of Connecticut, and I know
20 you testified their budget --

21 EXEC. DIR. MUTCHLER: Uh-huh.

22 REP. SAMUELSON: -- 2.4 million?

23 EXEC. DIR. MUTCHLER: Yep.

24 REP. SAMUELSON: Twice as large as
25 Pennsylvania's. Number of staff, 22?

1 EXEC. DIR. MUTCHLER: Yes.

2 REP. SAMUELSON: Twice as large as
3 Pennsylvania's 11.

4 So then I looked up Connecticut's
5 population and it's 3.5 million --

6 EXEC. DIR. MUTCHLER: Right.

7 REP. SAMUELSON: -- which is 28 percent of
8 Pennsylvania's. So less than a third of
9 Pennsylvania's population.

10 EXEC. DIR. MUTCHLER: Right.

11 REP. SAMUELSON: And they seem to have
12 fiscally twice as much of a commitment to the Office
13 of Open Records.

14 So I do realize we have a long way to get
15 to where Connecticut is. I also realize we have a
16 long way to go to get that -- to that initial 1.5
17 million that was envisioned for this Pennsylvania
18 Office of Open Records.

19 EXEC. DIR. MUTCHLER: Right.

20 REP. SAMUELSON: So let me ask a little
21 bit more about your line item and ask you to expand
22 on two things.

23 One, on paper here, it's level funded,
24 1,174,000. Same as last year.

25 EXEC. DIR. MUTCHLER: Uh-huh.

1 REP. SAMUELSON: In this budget, level
2 funding. A lot of agencies would aspire to that.
3 You should been here this morning when we were
4 talking about Governor Corbett's plan to cut 30
5 percent from Penn State, Pitt --

6 EXEC. DIR. MUTCHLER: Right.

7 REP. SAMUELSON: -- Temple. Thirty
8 percent cuts. Now, I realize when I see level
9 funding on paper for you and then you have DCED
10 which used to send out your mail and notified you a
11 couple weeks ago, oh, we're not going to do that
12 anymore. That might be, what, \$10,000? That might
13 be like one percent of your budget?

14 EXEC. DIR. MUTCHLER: It's more like
15 26,000 but -- 23, I think, is what we estimated.

16 REP. SAMUELSON: So two percent of your
17 budget?

18 EXEC. DIR. MUTCHLER: Right.

19 REP. SAMUELSON: Made up by that policy
20 decision. Then some benefit costs which might be
21 another two or three percent of your budget. So
22 even at level funding --

23 EXEC. DIR. MUTCHLER: Right.

24 REP. SAMUELSON: -- you are experiencing
25 cutbacks.

1 I wanted you to say two things. One is
2 what kind of cuts will you have to make if this
3 budget stays at level funding just to compensate for
4 those couple items?

5 EXEC. DIR. MUTCHLER: Uh-huh.

6 REP. SAMUELSON: And also, in the other
7 direction, what would you do if the funding was
8 restored to that original level that was envisioned
9 three years --

10 EXEC. DIR. MUTCHLER: Uh-huh.

11 REP. SAMUELSON: -- if this office had
12 been budgeted at 1.5 million to start as was -- as
13 was envisioned?

14 EXEC. DIR. MUTCHLER: Yes. I'm happy to
15 answer all of that. And I'd also like to point out
16 that while DCED is -- is -- you know, has charged us
17 in this regard, there's a lot of things that DCED
18 does for us that they don't charge us for.

19 They don't charge us for our human
20 relations help, and we get a great deal of that. We
21 have a very fine individual in -- that -- that
22 handles their budget, Bob Fortney, who, you know,
23 kind of does double duty for us.

24 Ad so there are many areas in which
25 they've been more than kind in helping us. They

1 have practical realities, too.

2 So for us, what we envision is that --
3 we've already lost one staff position that we were
4 not able to refill. If this budget goes through, it
5 will be a question as to whether or not we would
6 have to lose a second staffer, taking our lawyers
7 down to four -- down to five in this regard.

8 And so that would be impossible if you
9 continue -- if we continue to have to be in court
10 and if we continue to add in the -- if you add in
11 the state-relateds. Just not doable.

12 If we have the \$1.5 million, if we get the
13 \$300,000, that's going to mean additional staff for
14 the Office of Open Records, the -- the two
15 additional -- two to three additional depending on
16 what level of -- of attorney that we hire in that
17 regard.

18 And it -- it enables us to go back to a
19 full deck of trainings that will then reduce
20 hopefully the amount that we have.

21 We will then be able to also do more
22 hearings that the court is loudly and clearly
23 pushing for. The court is also very upset by what
24 -- with a due process issue when somebody files a
25 Right-to-Know request with, say, a school district,

1 the school district is under no obligation to let
2 the citizen know -- or I mean to let the employee
3 know that they're the subject of a Right-to-Know
4 request, and that's caused a lot of problems.
5 That's something we could address if we had
6 additional staff.

7 We would also be able to continue to meet
8 the -- we have over -- last year alone we had over
9 10,000 inquiries, citizens calling us or e-mailing
10 us asking for help, as well as local officials.

11 When you take one appeals officer and you
12 say, okay, you have 40 appeals that you have to do
13 in 20 days under the law, then I also need you to
14 write a brief because we're going to be in the
15 Supreme Court next week, and I need you to conduct
16 this mediation and a court-ordered hearing. It's
17 impossible.

18 And so if we returned the funding, if we
19 have this funding, we're going to be able to have
20 additional staff, we're going be able to meet the
21 statutory mandates, and move, hopefully, into our
22 new offices, our permanent offices.

23 Did I get all those questions or did I
24 miss any?

25 REP. SAMUELSON: Yes. Thank you.

1 EXEC. DIR. MUTCHLER: Okay.

2 REP. SAMUELSON: Well, thank you very
3 much.

4 EXEC. DIR. MUTCHLER: Okay.

5 CHAIRMAN ADOLPH: Okay. Thank you very
6 much for your --

7 EXEC. DIR. MUTCHLER: Thank you.

8 CHAIRMAN ADOLPH: -- testimony today. I
9 want to thank the members for their questions.

10 It's -- you were very informative --

11 EXEC. DIR. MUTCHLER: Thank you.

12 CHAIRMAN ADOLPH: -- and you stated your
13 case very well. Sometimes I know, at least speaking
14 for myself, sometimes the smaller agencies are a lot
15 easier to understand.

16 You know, when the Department of Welfare
17 comes in and you're talking about billions of
18 dollars, it's hard to get your hands around it.

19 Here you made your case, you explained
20 yourself, and I'm sure you're going to have support
21 in the House regarding your funding request.

22 EXEC. DIR. MUTCHLER: Thank you,
23 Mr. Chairman.

24 CHAIRMAN ADOLPH: And -- and keep up the
25 good work and we're -- you know, we have a good

1 law. We'd just like to make it a little bit better
2 as well. Okay. Thank you.

3 EXEC. DIR. MUTCHLER: Sounds good to us.
4 Thank you to all.

5 CHAIRMAN ADOLPH: And for the members,
6 thank you for your cooperation and your
7 participation today, and remind everyone that
8 tomorrow's hearing starts at 9:00, 9:00 a.m. We
9 have the Gaming Control Board at 9:00.

10 Thank you.

11 (The proceedings were adjourned at
12 4:25 p.m.)

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