

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE HEARING

STATE CAPITOL
MAIN BUILDING
ROOM 140
HARRISBURG, PENNSYLVANIA

THURSDAY, FEBRUARY 20, 2014
11:50 A.M.

PRESENTATION FROM
OFFICE OF OPEN RECORDS

BEFORE:

HONORABLE WILLIAM F. ADOLPH, JR., MAJORITY CHAIRMAN
HONORABLE KAREN BOBACK
HONORABLE JIM CHRISTIANA
HONORABLE GARY DAY
HONORABLE BRIAN ELLIS
HONORABLE GLEN GRELL
HONORABLE ADAM HARRIS
HONORABLE TOM KILLION
HONORABLE DAVID R. MILLARD
HONORABLE MARK T. MUSTIO
HONORABLE DONNA OBERLANDER
HONORABLE BERNIE T. O'NEILL
HONORABLE MICHAEL PEIFER
HONORABLE SCOTT A. PETRI
HONORABLE JEFFREY P. PYLE
HONORABLE CURTIS G. SONNEY

JEAN DAVIS REPORTING
285 EAST MANSION ROAD • HERSHEY, PA 17033
Phone (717)503-6568

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BEFORE (cont.'d):

- HONORABLE JOSEPH F. MARKOSEK, MINORITY CHAIRMAN**
- HONORABLE BRENDAN BOYLE**
- HONORABLE MATTHEW D. BRADFORD**
- HONORABLE MICHELLE F. BROWNLEE**
- HONORABLE MIKE CARROLL**
- HONORABLE H. SCOTT CONKLIN**
- HONORABLE MADELEINE DEAN**
- HONORABLE DEBERAH KULA**
- HONORABLE JOHN P. SABATINA**
- HONORABLE STEVEN SANTARSIERO**
- HONORABLE JAKE WHEATLEY**

ALSO IN ATTENDANCE:

- DAVID DONLEY, REPUBLICAN EXECUTIVE DIRECTOR**
- DAN CLARK, REPUBLICAN CHIEF COUNSEL**
- MIRIAM FOX, DEMOCRATIC EXECUTIVE DIRECTOR**
- HONORABLE DARYL METCALFE**

JEAN M. DAVIS, REPORTER
NOTARY PUBLIC

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TESTIFIER

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NATHAN BYERLY, DEPUTY EXECUTIVE DIRECTOR OFFICE OF OPEN RECORDS	9

1 P R O C E E D I N G S

2 * * *

3 MAJORITY CHAIRMAN ADOLPH: Good morning.

4 MS. MUTCHLER: Good morning, Mr. Chairman.

5 MR. BYERLY: Hello. Good morning.

6 MAJORITY CHAIRMAN ADOLPH: I'd like to reconvene
7 the House Appropriations Committee Budget Hearing.

8 First of all, I'd like to apologize to the
9 Executive Director for running a little late. Sometimes
10 you just never know how long some of the questions or
11 answers can be. We find them all to be informative.

12 We're going to get right into it. If you'd like
13 to introduce yourself -- I know you've been before us
14 before.

15 MS. MUTCHLER: Yes.

16 MAJORITY CHAIRMAN ADOLPH: But if you would
17 formally introduce yourself and the gentleman next to you
18 and make any opening statements and then we'll get right
19 into questions.

20 MS. MUTCHLER: Well, thank you, Mr. Chairman and
21 members of the Committee.

22 My name is Terry Mutchler. I'm the Executive
23 Director of the Office of Open Records. And with me today
24 is Nathan Byerly, who is the Deputy Director of the Office
25 of Open Records. And we're going to tag team you a little

1 in that I'm going to give you some broad-brush strokes and
2 I'm going to let Nathan paint in the fine points for you.

3 I'd like to begin, first of all, with a great
4 thanks for coming before the Committee. I have been before
5 you before. And I very much appreciate all the support
6 that the Legislature and this Committee, in particular, has
7 provided throughout the years.

8 This is the end of my six-year term. And it may
9 be the last time that I'm before you. I just want to take
10 a moment and say that in the six years that the Office of
11 Open Records has gotten on its feet and established, we
12 could not have done it at all without the great support of
13 the Legislature.

14 And I think oftentimes, among the criticism of
15 the Legislature, that folks forget that, you know, Senator
16 Pileggi wrote an incredible law. Everyone here passed it.
17 And it really has provided the Office of Open Records with
18 incredible tools to ensure that citizens have access to
19 their records. In shorthand, probably over two to three
20 hundred thousand records have been released under this new
21 paradigm. And some of them have saved taxpayer money.

22 Right-to-know requests have shown employees who
23 have remained on the payroll. And, you know, months after
24 they were dismissed, we've had right-to-know requests that
25 revealed that a city received a million dollars in an

1 anonymous donation. And so there's been many good things
2 that have come from this.

3 And I do think that it is appropriate to take a
4 moment and thank the Legislature for creating this law and
5 for ensuring that citizens have access to their records.

6 Of course, you know, the critics do abound and
7 we'll talk about some of those issues here. But I think
8 it's really important for everyone to recognize that, as
9 the Supreme Court has said, the Right-To-Know Law is a
10 legislative success. And I think that that's a great
11 endorsement.

12 In coming before you today, we're certainly
13 grateful that the Governor's Office has suggested an
14 increase -- or proposed an increase of the 1.9. And we're
15 going to talk to you today about the problems that we're
16 facing that are leading us to ask you for \$2.2 million in
17 this next budget.

18 I do believe that the Office of Open Records is
19 at a crossroad in two ways, first, in ensuring the
20 continued funding that's necessary now particularly that
21 the courts are so heavily involved in analyzing the law and
22 directing us to take particular action.

23 And also at the end of this six-year term, my
24 great hope is that, while I'm not here for a platform to
25 seek reappointment, whoever the next Executive Director is

1 -- and I do hope that it is me -- that we choose someone
2 who supports hands down open government but is also
3 cognizant of some of the issues that get presented.

4 I'd just like to tell the Committee a few things
5 about some of the problems that the law is facing and let
6 Nathan run you through the pointblank numbers. I know some
7 of this will come up in questioning. But I do think, as
8 the Chairman personally knows, he has worked very
9 tirelessly on trying to solve the issue of commercial
10 requestors. We see that over and over again. We've seen
11 it where folks are using the Right-To-Know Law as sort of a
12 capitalistic approach and, on the backs of Pennsylvania
13 taxpayers, are turning the information around and selling
14 it or seeking it.

15 We've also run into situations where other folks
16 are using the Right-To-Know Law to advance their own
17 political causes. And with that, you know, we have some
18 situations where hundreds of hours of State government work
19 is being spent basically to create a mailing list of home
20 addresses. And so that's an issue that I do think should
21 be and must be addressed.

22 Inmate requests, you know, we've talked about
23 that the last time we were here. And we just ran the
24 numbers today. And so far this year 49 percent of the
25 appeals that come to the Office of Open Records are from

1 inmates. And so that's still something that, you know, we
2 feel needs to be addressed and certainly to bring it to
3 your attention. And we know that Senate Bill 444 does
4 that.

5 And as we get into questions, we're very happy
6 also to talk to you about, you know, what happens if Penn
7 State, Temple, Lincoln, and Pitt are covered in the new --
8 in a new rewrite of this law and the net effect that that
9 would have on the Office of Open Records.

10 I also forget you guys are down there. I'm
11 sorry. I'm, like, looking this way or not this way,
12 forgetting you're over there.

13 And so with that, I'd just like to tell you this
14 year what the numbers are. We have over 9,000 appeals to
15 the Office of Open Records. We have several hundred cases
16 in the court system that our office is also required to
17 handle. We've had more than 50,000 e-mail and telephone
18 inquiries.

19 We're under Court order to conduct hearings,
20 which we do. We conduct mediations. We conduct trainings.
21 We, in essence, have become, in some instances, satellite
22 offices in the best possible way to many of the legislative
23 offices in that your constituents constantly are referred
24 to us. And we appreciate that. We try to train them and
25 try to work with them. And we basically do that with 16

1 people.

2 We know that open government is a cornerstone of
3 Democracy. And we are extremely grateful for the
4 unfettered support that the Legislature has provided.
5 Without that support, I would not have been able to, with
6 the help of a tireless staff, do the work that we do.

7 And specifically I'd just like for Nathan to walk
8 you through the 2.2 and where that would go. And then, of
9 course, we'd be happy to take any questions or issues that
10 you may have.

11 MR. BYERLY: One of the difficult things about
12 preparing the budget numbers to present is dealing with a
13 lot of the uncertainties and unknowns. I realize that's
14 basically dealing with any budget. But it's even more
15 emphasized in our office because there are basically three
16 big things that we're facing.

17 The first and most important at this point is the
18 recent remands from the courts to us for hearings. There
19 will be times that the record will go up to the Court, they
20 will determine that there needs to be more factual evidence
21 gathered, and they will send that back to us to conduct a
22 hearing.

23 Involved in a hearing -- I mean, there's a wide
24 range. But typically when they get to that level, they are
25 a more complex legal issue. So one that we've recently

1 had, we had a situation where it spanned three days. There
2 were complex legal issues. There were ten attorneys
3 involved in it. And it cost the office roughly three to
4 five thousand dollars to conduct that hearing.

5 And monitoring the cases that we do in the
6 courts, there's roughly 150 to 200 cases at any given time,
7 maybe sometimes as high as 250. If the trend continues on
8 the remands back to us, we will become overwhelmed with
9 dealing with the remands and holding those hearings. That
10 is a big concern of ours, to be able to comply with the
11 Court's orders and conduct those hearings.

12 The second area that we face along with all the
13 continuing workload is the education aspect. We look at
14 the bills that are pending. Senate Bill 444 is one. There
15 are several in the House as well that will amend the
16 Right-To-Know Law. It's still unclear how far those
17 amendments will go and what will be changed. But when
18 those changes are passed, we will need to educate and train
19 people on the different change s, especially public
20 officials.

21 And while our website is a very well-stocked
22 informational source for people, we have found that
23 training in larger groups and conferences, seminars, etc.,
24 works better. But again, that requires us to send people
25 out, to get people out to do the training. And that is

1 something else that we would be facing with the passage of
2 any new legislation.

3 The other, as Terry mentioned, was the inclusion
4 of Penn State and State-related institutions. If they are
5 included in the law and were brought under our
6 jurisdiction, it would grind us probably to a complete halt
7 just based upon the volume that that would generate.

8 Terry has run over some of the numbers. I'm not
9 going to bore you with going into any more. But again, to
10 date, we've issued 9,000 final determinations. Last year
11 we had approximately close to 2,500 appeals, which is like
12 a 115 percent increase from when we first started. And
13 while I envisioned it climbing and growing, I didn't
14 envision that it would increase that much over time.

15 We also are subject to the Right-To-Know Law. We
16 responded to over 700 right-to-know requests that came to
17 our office. A lot of them are misdirected. But we've also
18 noticed an increase on those that are relevant to documents
19 that we have. So again, more staff time to collect those
20 records, review those records, and get those to the parties
21 that have requested them.

22 And another big area that Terry mentioned was the
23 phone calls and e-mails that we answer. We receive
24 thousands and thousands of questions from people across the
25 State. We kind of become the 411 for anything government

1 record. And they'll call us to ask for, you know -- some
2 of the more funny ones is, what did Quaker women wear? Are
3 the monkeys that are housed in my zoo properly housed so
4 that they don't escape? Maybe less entertaining and normal
5 day to day would be birth certificates and passports. And
6 we make a point of informing them where they can go.

7 And then there's the more on-point ones with the
8 intent of the law. You know, where do I get the financial
9 records? Am I able to get memos or e-mails from public
10 officials or public agencies? So we field those questions
11 and walk them through how to use the process and procedure
12 as well.

13 And not to mention the panicked Open Records
14 officers that sometimes will call with a serious concern
15 that they don't want to do anything wrong that would
16 jeopardize their agency or themselves personally. And we
17 can give them guidance on things that they should do and
18 what the law requires.

19 The busyness of our office is -- it's hard to put
20 into words sometimes because we are so busy keeping up with
21 the work. But we recently had a lawmaker visit us from a
22 different state. And she commented to us how intense and
23 busy the office was. And Terry and I both laughed at that
24 time -- that's why it stuck in my mind -- because we were
25 like of the impression it was a slow, normal day.

1 So there are some things that the numbers don't
2 necessarily reflect. And again we, as Terry has mentioned,
3 emphasize the dedication of the staff that we've had.
4 We're very thankful for the budget proposal, the 1.975 that
5 has been proposed. But that would keep us at status quo.
6 That would keep us with our current complement. And in
7 order for us to keep up with what continues to be an
8 increase in the workload, just to keep up, we would need
9 the 2.2 to make additional hires and then have a little bit
10 of additional money left over for the hearings that we
11 foresee happening.

12 With that, we're open to any other questions that
13 you may have.

14 MAJORITY CHAIRMAN ADOLPH: Okay. Thank you.

15 MR. BYERLY: Sure.

16 MAJORITY CHAIRMAN ADOLPH: As is the custom, we
17 always invite the Chairmen of the standing Committee in the
18 House. And we're happy to have with us today, Chairman
19 Daryl Metcalfe of the State Government Committee.

20 REP. METCALFE: Thank you.

21 MAJORITY CHAIRMAN ADOLPH: I think, Executive
22 Director, you know my opinion. I think we have a good law.

23 MS. MUTCHLER: Yes.

24 MAJORITY CHAIRMAN ADOLPH: But I think it
25 certainly can be improved. I think a lot of your cost, you

1 know, is the law and you have to take what's given to you.
2 But I think it can be improved upon.

3 MS. MUTCHLER: Yes.

4 MAJORITY CHAIRMAN ADOLPH: And the bottom line
5 here, some of this, is all taxpayers' money. And some of
6 the requests are not really what the intention of the bill
7 was or the law. So I really have enjoyed working with your
8 office.

9 MS. MUTCHLER: Thank you.

10 MAJORITY CHAIRMAN ADOLPH: I'd like to see this
11 bill, this law, improved. That's all I'm going to say
12 because of the time.

13 MS. MUTCHLER: Thank you.

14 MAJORITY CHAIRMAN ADOLPH: Chairman Markosek.

15 MINORITY CHAIRMAN MARKOSEK: Thank you very much,
16 Mr. Chairman.

17 Very briefly, welcome, Executive Director and
18 Deputy Executive Director.

19 MS. MUTCHLER: Thank you.

20 MR. BYERLY: Thank you.

21 MINORITY CHAIRMAN MARKOSEK: You know, I don't
22 think we give ourselves in the Legislature enough credit
23 for establishing an Open Records Law and Office. You know,
24 for many years when I was here, we were criticized that
25 Pennsylvania was very unopen. And the Legislature, I

1 think, has responded pretty well in a general sense in
2 opening up records to the State to a great degree and maybe
3 even, as you argue and some may argue, we even make it a
4 little bit too much sometimes.

5 MS. MUTCHLER: Right.

6 MINORITY CHAIRMAN MARKOSEK: But I don't think,
7 you know, the folks out there, whether it's the media or
8 the public, really don't give us enough credit. I mean, we
9 get criticized for a lot of things. But the one thing I
10 think we deserve some credit for is passing an Open Records
11 Law.

12 MS. MUTCHLER: Yes.

13 MINORITY CHAIRMAN MARKOSEK: Very briefly, my
14 question deals with the municipal level of government.

15 MS. MUTCHLER: Okay.

16 MINORITY CHAIRMAN MARKOSEK: And I'll be honest.
17 I have a municipality back home that has had some
18 complaints relative to -- and they're doing everything they
19 can to comply because they have to. It's the law.

20 MS. MUTCHLER: Sure.

21 MINORITY CHAIRMAN MARKOSEK: But they have a
22 frivolous line of questions essentially that are coming in.
23 And I know frivolous is in the eye of the beholder.

24 MS. MUTCHLER: Sure.

25 MINORITY CHAIRMAN MARKOSEK: But nevertheless,

1 it's jamming up.

2 MS. MUTCHLER: Sure.

3 MINORITY CHAIRMAN MARKOSEK: And as you
4 mentioned, grinding to a halt.

5 MS. MUTCHLER: Right.

6 MAJORITY CHAIRMAN ADOLPH:

7 MINORITY CHAIRMAN MARKOSEK: The inner workings
8 of the municipality is grinding to a halt or at least it's
9 going in that direction.

10 MS. MUTCHLER: Okay.

11 MINORITY CHAIRMAN MARKOSEK: And it's costly.
12 And it's taking people's time away from the other things
13 that they're being paid to do.

14 MS. MUTCHLER: Of course.

15 MINORITY CHAIRMAN MARKOSEK: How would I respond?
16 I know you're the State level. But I think you have
17 purview over the municipal and other layers of government
18 as well.

19 MS. MUTCHLER: Yes, sir.

20 MINORITY CHAIRMAN MARKOSEK: How would I respond
21 to my municipality when they come to me with this
22 complaint?

23 MS. MUTCHLER: Well, Mr. Chairman, thank you.
24 And thank you for the introductory remarks.

25 MINORITY CHAIRMAN MARKOSEK: Sure.

1 MS. MUTCHLER: I share the view that
2 municipalities, particularly townships, suffer a great deal
3 in some ways under this law. What we have said since the
4 beginning of the Right-To-Know Law is the implementation of
5 the Office of Open Records tries to be a resource to these
6 municipalities. And what I would say to them first is a
7 couple of things.

8 MINORITY CHAIRMAN MARKOSEK: All right.

9 MS. MUTCHLER: The key to a successful
10 Right-To-Know Law is to manage your records. Far too many
11 municipalities have records that are 20, 30, 40 years old
12 and they're on the hook for them.

13 MINORITY CHAIRMAN MARKOSEK: Okay.

14 MS. MUTCHLER: So trying to assess what records
15 they have and ensuring that they're sticking to the State's
16 records retention laws so that if you're only required to
17 keep records for three years or five years or ten years,
18 that you're doing that.

19 MINORITY CHAIRMAN MARKOSEK: Okay.

20 MS. MUTCHLER: That's one component.

21 MINORITY CHAIRMAN MARKOSEK: All right.

22 MS. MUTCHLER: I still find municipalities that
23 have not yet taken advantage of the forms that the Office
24 of Open Records provides. There is not a response that an
25 agency can provide under the Right-To-Know Law that is not

1 available to them on our website.

2 MINORITY CHAIRMAN MARKOSEK: Okay.

3 MS. MUTCHLER: And so they would be downloading
4 those forms to help ease that so that they're not
5 constantly reinventing the wheel.

6 MINORITY CHAIRMAN MARKOSEK: Sure.

7 MS. MUTCHLER: Many agencies are afraid that when
8 they get a requestor -- and every county has the one
9 less-than-sane person that wants to grind things to a halt.
10 The key there is when you receive a request, first of all,
11 make sure it's a request, but call the requestor.

12 MINORITY CHAIRMAN MARKOSEK: Okay.

13 MS. MUTCHLER: So many times requestors really
14 don't know what they're asking for. And an agency probably
15 needs to, you know, take a look at, is this really a
16 request? How can we help? They just need to narrow it or
17 get it out of the Right-To-Know Law field.

18 MINORITY CHAIRMAN MARKOSEK: In the case that I'm
19 talking about, the requestor does know and knows exactly
20 what he's doing.

21 MS. MUTCHLER: Right.

22 MINORITY CHAIRMAN MARKOSEK: The thought, you
23 know, has the goal, the agenda, of grinding it to a halt.

24 MS. MUTCHLER: Sure. We see that. There was a
25 township outside of Philadelphia north of Delaware County

1 where the requestor filed 300 right-to-know requests in
2 about a three-month period. There is no way that you can
3 respond. You just can't.

4 MINORITY CHAIRMAN MARKOSEK: Right.

5 MS. MUTCHLER: And, you know, of course this was
6 when I was a little naiver than I am now and I decided to
7 broker a meeting and see if we could -- I was certain we
8 could solve this problem. The only thing it did was
9 aggravate the situation.

10 MINORITY CHAIRMAN MARKOSEK: Right.

11 MS. MUTCHLER: More requests came in. And then
12 what we found out is it was someone who had lost an
13 election.

14 MINORITY CHAIRMAN MARKOSEK: Okay.

15 MS. MUTCHLER: And so they wanted to aggravate
16 the new folks.

17 MINORITY CHAIRMAN MARKOSEK: Sure.

18 MS. MUTCHLER: We see this with inmates over in
19 Bucks County. There is a particular inmate that files
20 hundreds of right-to-know requests. And the right-to-know
21 officer there does a terrific job. But it can be
22 overwhelming.

23 MINORITY CHAIRMAN MARKOSEK: Sure.

24 MS. MUTCHLER: And the final thing that I would
25 say to a municipality that comes with these concerns is,

1 once you try to reduce and help yourself as best you can,
2 the reality is, as with any law, you are going to have the
3 extreme fray where, on one hand, you have citizens and
4 members of the media that are, quite frankly, convinced
5 that every public official is a criminal and, on the other
6 hand, you have public officials that don't like the public.

7 But this is where the Legislature has chosen a
8 policy course. And the policy course is that open
9 government has to trump. And we do need to find ways to
10 very early on.

11 MINORITY CHAIRMAN MARKOSEK: Right.

12 MS. MUTCHLER: Chairman Adolph came to talk about
13 problems where people were, as I said, using this law for
14 commercial use or to advance political concern.

15 MINORITY CHAIRMAN MARKOSEK: Right.

16 MS. MUTCHLER: We have to find a way to address
17 that without cutting into the core of the Right-To-Know
18 Law. I do think that there's ways to do it. Other states
19 have done it. But that's really a policy decision as to
20 where that balance rests.

21 MINORITY CHAIRMAN MARKOSEK: Right.

22 MS. MUTCHLER: And, of course, the only last
23 piece I can say is that we would stand ready to help that
24 municipality or any municipality because, you know, that's
25 also part of our role.

1 MR. BYERLY: And if I could, just one quick
2 recommendation, too?

3 MINORITY CHAIRMAN MARKOSEK: Sure.

4 MR. BYERLY: Get as many records as they can on
5 their web page so that they can point them there.

6 MS. MUTCHLER: Yes.

7 MINORITY CHAIRMAN MARKOSEK: We'll be in touch.

8 MR. BYERLY: Okay.

9 MINORITY CHAIRMAN MARKOSEK: Thank you.

10 MR. BYERLY: Thank you.

11 MS. MUTCHLER: Thank you.

12 MINORITY CHAIRMAN MARKOSEK: Thank you,
13 Mr. Chairman.

14 MAJORITY CHAIRMAN ADOLPH: Thank you.
15 Chairman Metcalfe.

16 REP. METCALFE: Thank you, Chairman Adolph.
17 Thank you for your testimony today.

18 MS. MUTCHLER: Sure.

19 REP. METCALFE: As you know, we, from the State
20 Government Committee, held a hearing on the Right-To-Know
21 Law.

22 MS. MUTCHLER: Yes.

23 REP. METCALFE: And you, in fact, testified at
24 our hearing.

25 MS. MUTCHLER: Yes.

1 REP. METCALFE: Last session we were waiting on
2 the Senate. We had kind of led on some other issues and
3 were waiting for them to lead on the Right-To-Know Law
4 changes that so many of us have been discussing for several
5 years now.

6 MS. MUTCHLER: Yes.

7 REP. METCALFE: We're kind of still waiting in a
8 holding pattern for what's coming out of the Senate.
9 They've done a lot of work. We've shared a lot with them.

10 MS. MUTCHLER: Yes.

11 REP. METCALFE: So we're hoping that that product
12 will come to us and we'll be able to move forward with
13 discussing some of these issues.

14 MS. MUTCHLER: Yes.

15 REP. METCALFE: But I do have some concerns. And
16 I know you mentioned about the criticism of the Office of
17 Open Records or the law. And I think that's good. I think
18 it's good that citizens are utilizing it. I think that
19 it's good that citizens are critiquing it.

20 MS. MUTCHLER: Yes.

21 REP. METCALFE: And I think that's what we're
22 here for is to serve them and ensuring that we actually
23 make this law into what the public wants it to be, not
24 those that are charged and paid to actually deal with the
25 law and make sure that it's working as it was designed to

1 by the Legislature, but that it's actually doing what the
2 people want.

3 MS. MUTCHLER: Yes.

4 REP. METCALFE: And that raises -- and some of
5 the words that you've used kind of raise some concerns with
6 me in that regard. Probably the -- you mentioned how we're
7 in court a good bit on some of these appeals.

8 MS. MUTCHLER: Yes.

9 REP. METCALFE: And you mentioned the cost
10 associated with that.

11 MS. MUTCHLER: Yes.

12 REP. METCALFE: And my concern is that, you know,
13 when I look at the Office of Open Records' appeals process
14 interim guidelines preliminary statement that was released
15 by your office some years back related to the law that was
16 passed in 2008.

17 MS. MUTCHLER: Yes.

18 REP. METCALFE: And it had stated in this
19 preliminary statement that these interim guidelines will
20 undergo a full promulgation process in 2010 --

21 MS. MUTCHLER: Yes.

22 REP. METCALFE: -- including a public comment
23 period for adopting formal regulations as governed by the
24 Pennsylvania Independent Regulatory Review Commission.

25 MS. MUTCHLER: Yes.

1 REP. METCALFE: And my understanding is that it's
2 now 2014 and we've never had that process occur.

3 MS. MUTCHLER: That's accurate, Mr. Chairman.

4 REP. METCALFE: So we passed a law and we were
5 hopeful to see regulations promulgated to ensure that that
6 law was carried out as was intended to be.

7 MS. MUTCHLER: Right.

8 REP. METCALFE: And here we are ending your term
9 as the first appointed Executive Director for this new
10 office. And we're ending it with no regulations to
11 actually regulate and give your employees direction in how
12 they should carry out their duties.

13 And I would submit that that is adding to the
14 cost because we are in court litigating because we have no
15 regulations, formal regulations, that are in place to
16 prevent that. What five years now -- I mean, we're into
17 the sixth year -- and we don't have the approved
18 regulations yet on how the appeal should be processed. And
19 some believe that it's been going back and forth between
20 your office and the Office of General Counsel and the AG's
21 Office, and differing opinions on such.

22 But the regulations not being in place, not
23 having appeal procedures in place, I think that's costing
24 the taxpayers a lot of money. And it's subjecting
25 requestors to needless delays and potential harassment,

1 especially from third parties.

2 I mean, this whole third-party issue, which we'll
3 talk about a little bit, but, I mean, what's your -- I
4 mean, can you share with us the reasoning for having all
5 these years gone by to the ending of your tenure in that
6 position, your term of office, and we have no regulations
7 governing this process?

8 MS. MUTCHLER: Well, first, Mr. Chairman, thank
9 you for the opportunity to address this very critical and
10 important component of this. And I, too, share your view
11 that the citizenry is what often drives and sometimes has
12 made better the Right-To-Know Law. There's a couple of
13 things that I would point out.

14 REP. METCALFE: Okay.

15 MS. MUTCHLER: The legislation that was written
16 does not require the Office of Open Records to have
17 regulations. It requires us to have policies. And I
18 personally felt that regulations were critical to ensuring
19 that this couldn't be erased in years to come.

20 REP. METCALFE: It doesn't require, but allowed
21 for.

22 MS. MUTCHLER: Yes, sir.

23 REP. METCALFE: Okay.

24 MS. MUTCHLER: And so the Office of Open Records
25 did write regulations in 2009. And those regulations are

1 the exact format of what we have called the interim
2 guidelines to establish policy as to how someone goes into
3 an appeal and whatnot.

4 REP. METCALFE: Okay.

5 MS. MUTCHLER: And you are right in referencing
6 that the holdup was merely this: At the time that the
7 Office of Open Records came on the scene in 2009, I felt
8 very strongly that in order to prevent future Executive
9 Directors from erasing any of what I thought would be good
10 work that we would do, that regulations, although not
11 required, were critical.

12 REP. METCALFE: Okay.

13 MS. MUTCHLER: We wrote those regulations and we
14 gave them to OGC. OGC, because we were sort of this quasi
15 independent agency, refused to sign off on the regulations.

16 REP. METCALFE: Right.

17 MS. MUTCHLER: The Attorney General at that time
18 rightly said the process is, it goes to OGC first and then
19 it would come to us. At that juncture, we got close to an
20 election year and those regulations sat in the sense of
21 neither party would sign off to get them properly before
22 IRC in that regard.

23 Keep in mind that the Office of Open Records at
24 the very beginning, while we did write the regulations and
25 the interim guidelines -- I regret calling them interim

1 guidelines. I should have called them policy. But what
2 you have there are the regulations in terms of, you know,
3 if they --

4 REP. METCALFE: Well, not really. Not really
5 because they would have went through the regulatory
6 process --

7 MS. MUTCHLER: Right. I understand. I'm sorry.
8 What I'm saying is --

9 REP. METCALFE: -- and the public comment
10 period --

11 MS. MUTCHLER: What I'm saying is if --

12 REP. METCALFE: -- and our Oversight Committee.

13 MS. MUTCHLER: I'm saying it's a duplicate with a
14 different title. And I share that view.

15 REP. METCALFE: Okay.

16 MS. MUTCHLER: And so what we've then tried to
17 do, seeing that sort of standoff, if you will, is then wait
18 until the new Administration. And at the beginning of the
19 new Administration, it was -- we had some very
20 rough-sailing waters. However, within the first couple of
21 years of this Administration, we've done a complete 180 and
22 worked very, very closely with them. And I can't say
23 enough about the communication lines that have been opened
24 with them.

25 REP. METCALFE: Okay.

1 MS. MUTCHLER: And what we've done is take those
2 interim guidelines that would -- if I change the title and
3 IRC passed them, would also be the regulations and we've
4 given those to the State Government Committee, to the
5 Senate State Government Committee to try to help us in this
6 regard.

7 There is a continuing -- I don't want to say
8 standoff because I don't think that that's -- that sends
9 more of an aggressive message. And I don't think it's
10 that. There's a continuing question -- and it's a
11 legitimate legal question -- as to should OGC sign off when
12 we oversee OGC's Right-To-Know Law requests? And at the
13 same time, can the Attorney General get involved?

14 And so what I can assure this Committee and the
15 citizens of the Commonwealth are that there are policies
16 and procedures that are in place that enabled us to
17 establish this office in accordance with direct statutory
18 authority to say, you know, we were the ones that set up
19 these guidelines to say, okay, if you want to file an
20 appeal, feel --

21 REP. METCALFE: Excuse me for one minute.

22 MS. MUTCHLER: Sure.

23 REP. METCALFE: I really don't want to prolong
24 the Committee's time and your time here today by asking the
25 questions.

1 MS. MUTCHLER: Well, I'd be happy to meet with
2 you, Mr. Chairman, and walk through that. I just want to
3 assure the Committee that the citizens of Pennsylvania have
4 a step-by-step process that's governed by policy
5 statutorily --

6 REP. METCALFE: And that's my concern. That's
7 why I kind of said --

8 MS. MUTCHLER: I understand.

9 REP. METCALFE: -- statutorily, and that's what
10 -- you're aware I wrote you a letter on December 20th.

11 MS. MUTCHLER: Yes, sir. And we responded.

12 REP. METCALFE: And you responded. And in my
13 December 20th letter to you, the primary concern that I
14 raised related to the impact of the Office of Open Records'
15 third-party-notice requirement on citizens of the
16 Commonwealth who request public records.

17 MS. MUTCHLER: Yes.

18 REP. METCALFE: In that letter, I wrote, I'm
19 concerned that the third-party-notice requirement that ORC
20 has instituted without statutory authority will create a
21 chilling effect and discourage citizens from requesting the
22 government records they need to keep their government
23 accountable.

24 MS. MUTCHLER: Yes, sir.

25 REP. METCALFE: Your actions may also expose

1 citizen requestors to potential intimidation for simply
2 exercising their rights under the Right-To-Know Law.

3 MS. MUTCHLER: Yes, sir.

4 REP. METCALFE: And I believe that the General
5 Assembly's intent -- this wasn't in the letter. That's
6 what I'm saying now -- enacting this law was to provide
7 access to government records as a means of keeping
8 government accountable.

9 MS. MUTCHLER: Yes.

10 REP. METCALFE: When you say that you're doing
11 this with statutory authority, the regulatory process is
12 meant to ensure that what you do is with statutory
13 authority. So if every department issued guidelines or
14 interim guidelines and then claimed that they were
15 operating under statute -- and that's why I raise that
16 concern.

17 MS. MUTCHLER: Okay.

18 REP. METCALFE: I don't believe that you have
19 statutory authority for this third-party-notice
20 requirement. And I know that you kind of blamed it on the
21 courts. But I'm not aware of any case law that set that
22 up. There might be some opinions of individual judges that
23 they'd like that. But I don't think -- I know when I voted
24 on this, my intent wasn't to allow for --

25 MS. MUTCHLER: Sure.

1 REP. METCALFE: -- a third party to come in, for
2 the PSEA or anybody else to come in and file suit while
3 somebody is making a request of information that is
4 supposed to be provided for under the law, whether they're
5 creating a database or not.

6 MS. MUTCHLER: I understand.

7 REP. METCALFE: You brought up the database
8 issue. And everyone that's sitting here that's an elected
9 official utilizes a government-provided database. And we
10 get it from the Department of State or from the County
11 Bureau of Elections. And it's related to someone's voting
12 status, their voting frequency, their age, their phone
13 numbers.

14 MS. MUTCHLER: I know.

15 REP. METCALFE: It's all paid for by the
16 taxpayers that are generated voter lists that are open
17 records that are public information. And we all use that.
18 So to criticize somebody because they're building a
19 database -- we've had a database built that's being
20 utilized by elected officials across this Commonwealth and
21 the State government and Federal government and local
22 government and every candidate that wants to be involved.

23 MS. MUTCHLER: Mr. Chairman, if I might respond
24 directly to the third-party notice and also your remarks
25 about this specific case, Section 707, the Legislature did

1 intend for third-party notification to occur. And the
2 Legislature expressly requires agencies expressly in
3 Section 707(b) to provide third-party notice where
4 confidential proprietary information or trade secrets are
5 requested.

6 The law you guys set out says that notice is
7 required within five business days of the receipt of the
8 request and the agency has five business days from the
9 receipt of notice.

10 Moreover, this law says that when somebody asks
11 for a record, if there is a safety concern, that that
12 safety concern can overcome the presumption of openness in
13 this regard. And the only way for someone to know that,
14 you know, to raise a safety concern is if they have notice.
15 So Section 707(b) expressly talks about third-party notice.

16 This is not something that the Office of Open
17 Records created. You guys envisioned it.

18 Section 1102 authorizes the OOR to adopt the
19 procedures relating to this. I'd just like to point you to
20 this case law. The Pennsylvania Supreme Court has raised
21 concerns about this, whether citizens -- whether people
22 have a right to be notified of records.

23 And in the Pennsylvania State Education
24 Association versus the Office of Open Records, the Supreme
25 Court expressly said that the OOR could be sued because we

1 need to be able to provide third-party-notice challenge for
2 requestors. The case was about public school employees.
3 And the Supreme Court concluded that public school
4 employees should have notice to participate if someone asks
5 for their information.

6 These are binding decisions. These aren't single
7 judge rulings. They talk about the significant
8 constitutional deficiencies with making sure that
9 third-party notice is there.

10 And let me just give you a prime example.
11 Outside of Pittsburgh there was a school district early on.
12 Requestor files a right-to-know request seeking public
13 records. Absolutely no question. They requested public
14 records related to a school teacher. The Agency did not
15 respond and he had an automatic right to appeal to us.

16 When he came to us, he filed the appeal. And
17 attached to it was a protection from abuse order. And what
18 it said was, this protection from abuse order has expired.
19 And therefore, I'm no longer a threat. And he insisted
20 that we order release of this. The only way that we could
21 determine whether there was a real security threat to this
22 woman, which obviously, there had been previously, was if
23 she had notice.

24 And so the notice requirements were not something
25 that the Office of Open Records just, you know,

1 manufactured or magically created. We followed your lead
2 to say if you're asking for confidential proprietary
3 records or you're asking for trade secrets, you have to
4 give notice.

5 REP. METCALFE: Exactly. Exactly. And that's
6 very limited to when you gave notice. Very limited. And
7 when you can find somebody's address in the phonebook or in
8 the voter rolls, it's not confidential information.

9 MS. MUTCHLER: Well, but it's not always
10 accurate, Mr. Chairman. It is not always accurate
11 information. We just today did a white pages request and
12 found several of our own staff members that had inaccurate
13 addresses.

14 I share your view that most -- you know, look, if
15 somebody comes and they ask for a salary, doesn't the
16 process grind to a halt if we have to notify that person?
17 I would argue that it does. And we shouldn't have to do
18 that for basic public information.

19 However, when the Legislature has specifically
20 said that a home address is available unless there's a
21 security risk or unless you are a minor or unless you are a
22 law enforcement officer or a Judge, the only way to know if
23 there's a security risk is to provide notice.

24 And I would say this -- and I say this as clearly
25 as I can -- I'm not --

1 REP. METCALFE: Wait. Wait. Wait a minute.

2 MS. MUTCHLER: I'm not --

3 REP. METCALFE: What you just said, the only way
4 to do this, provide notice. So you're taking it -- even
5 though the Legislature defines specific instances where
6 third-party notice would occur, you broaden that to pretty
7 much to say any request should have the third party
8 noticed.

9 MS. MUTCHLER: The Court has, not us. The
10 Pennsylvania Supreme Court did.

11 REP. METCALFE: And I know you have -- you know,
12 you've sited certain things that have been said. But as
13 far as a ruling through those processes, I'm not aware of
14 the final ruling.

15 MS. MUTCHLER: I'd be very happy to provide both
16 of the cases, Mr. Chairman.

17 REP. METCALFE: If you could do that and send it
18 over.

19 MS. MUTCHLER: We'll do that.

20 REP. METCALFE: Send it over.

21 MS. MUTCHLER: We will.

22 REP. METCALFE: Send it over and we'll have
23 everyone look it over as far as from our staff. But given
24 this hearing, you know, I'd really like to know what the
25 impact of the third-party notice has been.

1 MS. MUTCHLER: It's been significant in some
2 cases.

3 REP. METCALFE: Can you quantify that in dollars?

4 MS. MUTCHLER: Sure, I can. On some I can. It's
5 been significant in two ways. To the example I just gave
6 you with the school teacher in Pittsburgh, it was very
7 emotionally significant in that regard. The school
8 district then did come forward and argue that her security
9 was at risk. And so the impact was great.

10 REP. METCALFE: Okay.

11 MS. MUTCHLER: In terms of the financial impact,
12 what we've seen in this -- we've seen several Right-To-Know
13 Law requests that have come through for records related to
14 all retirees or all active employees or even like the
15 Philadelphia School District, things like that. And notice
16 is usually provided by an e-mail blast.

17 But as you raised in your letter to us, when a
18 requestor filed a -- the Pennsylvania for Union reform
19 filed a right-to-know request and sought -- I just want to
20 get this right. What he sought was all names and home
21 addresses of 220,000 active and retired workers of the
22 Commonwealth. And he filed that in August.

23 REP. METCALFE: Okay.

24 MS. MUTCHLER: SERS provided 34,000 names and
25 home addresses to him, taking the pool down to about

1 190,000. They then denied the request for the remaining
2 and didn't provide notice. This ties into the financial
3 impact.

4 REP. METCALFE: Okay.

5 MS. MUTCHLER: Then when it came to the Office of
6 Open Records, based on the case law, we then ordered that
7 notice be given. And notice was given. And then the
8 requestor withdrew virtually all but 15,000 of his requests
9 for addresses.

10 REP. METCALFE: Okay.

11 MS. MUTCHLER: And what SERS did in this regard
12 was it hired an outside contractor at a cost estimated
13 somewhere between 90,000 and 200,000 dollars to send a
14 mailer to each and every one of these folks.

15 REP. METCALFE: Okay.

16 MS. MUTCHLER: And I want to point out -- and I
17 do think this is significant -- when this same requestor in
18 May made the same request for active employees and they
19 provided notice via e-mail, he objected and said that that
20 was not good enough. They read the tea leaves in terms of
21 going to court. And they decided to hire an outside
22 contractor at a cost of \$90,000 -- I haven't seen that
23 bill. That's what they're saying -- to provide this
24 third-party notice.

25 REP. METCALFE: Okay.

1 MS. MUTCHLER: And so there is a big taxpayer
2 pool. And I also want to point out -- and this is another
3 problem that we get into -- that about 300 hours worth of
4 just our work, not to mention OAG or PSERS, went into that
5 May request. And the day before the Office of Open Records
6 was to issue its final determination, that requestor
7 withdrew the request. That's also a loss of taxpayer
8 money.

9 I just want to underscore that I share the
10 Chairman's view about third-party notice. I think that
11 there are times absolutely 100 percent that it grinds it to
12 a halt and it is not what the Legislature or anyone
13 intended in terms of the Right-To-Know Law.

14 But at the Office of Open Records, I don't want
15 to be the person that says, but this is the case where
16 we're not going to require notice and someone is injured or
17 dies and then I'm before this Committee under a much
18 different tenure circumstance.

19 REP. METCALFE: Well, I think you're greatly
20 exaggerating the outcome and the impact of this law and how
21 the Legislature designed it. To specify copyright and the
22 other -- several of those three -- three different criteria
23 there, I believe, and to say that that should apply to
24 everyone in the Commonwealth that's ever having anything
25 requested when they're working for the government or

1 involved and they have public information like that that
2 should be available to say that there's going to be some
3 dramatic outcome as a result of it is a great exaggeration.

4 MS. MUTCHLER: Well, Mr. Chairman, I --

5 REP. METCALFE: And certainly I don't think
6 anybody would disagree that the individual that was having
7 it requested or would previously have had the protection
8 from abuse order that that should have been denied because
9 it was a safety issue there.

10 MS. MUTCHLER: Well, I --

11 REP. METCALFE: But there's also responsibility
12 on behalf of the employee or the person who's in those
13 situations to let their employer know that, hey, I don't
14 want my information going out. If somebody is trying to
15 get ahold of me, here's what's going on. It can't totally
16 be on every citizen in the Commonwealth that now they're
17 going to try and extract information from the government
18 that was supposed to be made available and that you're
19 going to require --

20 MS. MUTCHLER: I share that.

21 REP. METCALFE: -- hundreds of thousands of, you
22 know, mailings to go out, to notify people that --

23 MS. MUTCHLER: I share that.

24 REP. METCALFE: -- they could have found in the
25 phonebook or on the voter list.

1 MS. MUTCHLER: I share that view, Mr. Chairman.

2 REP. METCALFE: And to look --

3 MS. MUTCHLER: I share that view. Other states
4 share that view.

5 REP. METCALFE: And to --

6 MS. MUTCHLER: However, the Pennsylvania Supreme
7 Court doesn't share that view. I stand ready to find a way
8 to do that.

9 REP. METCALFE: And that takes me back to, you
10 know, if we would have had a regulatory process over this
11 and if we would have had regulations in place and we would
12 have had more direction in the process instead of just what
13 the interim guidelines were five years ago to set this all
14 up that we've been running for so many years now, maybe we
15 would have avoided some of this cost instead of depending
16 on the courts. I don't like depending on the courts.

17 MS. MUTCHLER: Well, Mr. Chairman --

18 REP. METCALFE: And some of my colleagues don't
19 like depending on the courts either.

20 MS. MUTCHLER: But, Mr. Chairman, I --

21 REP. METCALFE: Hopefully that --

22 MAJORITY CHAIRMAN ADOLPH: Mr. Chairman --

23 REP. METCALFE: Hopefully that's what we're going
24 to get back to --

25 MAJORITY CHAIRMAN ADOLPH: Okay --

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REP. METCALFE: -- dealing with the law.

MAJORITY CHAIRMAN ADOLPH: Representative --

REP. METCALFE: Thank you, Mr. Chairman.

MAJORITY CHAIRMAN ADOLPH: Chairman Metcalfe, Executive Director, the Chair has allowed about 20 minutes of that discussion. The members of the Appropriations Committee have questions, you know, a good six or seven, so I'm going to move on.

REP. METCALFE: Thank you for your time.

MAJORITY CHAIRMAN ADOLPH: Okay.

REP. METCALFE: Thank you.

MAJORITY CHAIRMAN ADOLPH: Next is Representative John Sabatina.

REP. SABATINA: Thank you, Mr. Chairman.

Thank you, Director and Deputy Director.

MS. MUTCHLER: Thank you.

MR. BYERLY: Thank you.

REP. SABATINA: Along the lines of safety, I'm wondering if your office is required to verify the identity of the requestor?

MS. MUTCHLER: We're not required to verify it.

REP. SABATINA: Okay.

MS. MUTCHLER: But what the Legislature foresaw was making sure that if someone wanted to take advantage of this process that they had to provide a written request.

1 REP. SABATINA: Okay.

2 MS. MUTCHLER: The Legislature said you could be
3 anonymous and still file a right-to-know request but you
4 could not take advantage of the appeal.

5 REP. SABATINA: Okay.

6 MS. MUTCHLER: We've had situations where,
7 candidly, you look at a name and it's like, I wonder if
8 that's real. And we've tried in those instances to be sure
9 so that there's not a waste.

10 REP. SABATINA: Okay.

11 MS. MUTCHLER: But there's no requirement.

12 REP. SABATINA: Okay.

13 MS. MUTCHLER: And we really haven't seen, that I
14 am aware of, any issues. I mean, most folks provide their
15 -- the requestors provide their name, their address, their
16 contact information.

17 REP. SABATINA: Okay.

18 MS. MUTCHLER: But I will say that we've seen
19 situations where someone doesn't want to file a
20 right-to-know request in their own community and they'll
21 have a friend do it or they'll have someone else do that.

22 REP. SABATINA: Okay.

23 MS. MUTCHLER: But there's no mechanism that I'm
24 aware of at least in place that, you know, there's a
25 verification other than if they contact us by e-mail, we

1 e-mail them back.

2 REP. SABATINA: Okay.

3 MS. MUTCHLER: Things like that.

4 REP. SABATINA: Well, part of my concern is that
5 if there is an anonymous requestor or a factious requestor,
6 I guess you could say --

7 MS. MUTCHLER: Sure.

8 REP. SABATINA: -- and he's requesting
9 addresses --

10 MS. MUTCHLER: Yes.

11 REP. SABATINA: -- you know, there's a -- I'm
12 alluding to what you just said. If it turns out bad down
13 the road, I'm just wondering where the stop gap is. You
14 know, to my knowledge, we can't even find out who -- the
15 police or the officials can't even find out if something
16 bad does happen to someone, how does your office help the
17 police, you know, provide information on that requestor?

18 MS. MUTCHLER: We've had situations where police
19 departments have contacted us and what they want to know is
20 if right-to-know requests themselves are public record.

21 REP. SABATINA: Okay.

22 MS. MUTCHLER: And they are.

23 REP. SABATINA: Okay.

24 MS. MUTCHLER: And that has helped lead them to
25 situations where there's been harassment or problems.

1 REP. SABATINA: Okay.

2 MS. MUTCHLER: That's all public record anyway
3 that I'm aware of.

4 REP. SABATINA: All right.

5 MS. MUTCHLER: Most of what we see is when
6 townships, counties, and school districts, when those
7 appeals come to us, most times, virtually -- I mean, the
8 majority of times the agency is aware of the requestor and
9 knows them because they're in that community and they're
10 sort of frequent users of it.

11 REP. SABATINA: Okay.

12 MS. MUTCHLER: But that I'm aware of there's no,
13 you know, sure way to be sure that we're dealing with a
14 real live individual.

15 REP. SABATINA: Would you suggest that change be
16 added to the law?

17 MS. MUTCHLER: I would not, only in that in the
18 9,000 appeals, we haven't seen a problem in that way.

19 REP. SABATINA: Okay.

20 MS. MUTCHLER: I mean, we, you know, at the
21 Office of Open Records, you have two different time frames.
22 When a requestor -- when a township gets a request, for
23 example, they have five business days to respond. I would
24 have to put some thought into what the mechanism would be
25 for them to be assured that they're dealing with a

1 legitimate named individual.

2 REP. SABATINA: Okay.

3 MS. MUTCHLER: And then because this law foresees
4 out-of-state right-to-know file requestors, you know, how
5 would you verify that?

6 REP. SABATINA: Sure.

7 MS. MUTCHLER: We really wouldn't have a position
8 one way or the other. But, I mean, if that's what the
9 Legislature said do, we would do.

10 REP. SABATINA: Okay.

11 MS. MUTCHLER: But I'd have to give that some
12 thought to see how that would play out.

13 REP. SABATINA: I'm just weary of the situation.

14 MS. MUTCHLER: Sure.

15 REP. SABATINA: And thank goodness it hasn't
16 arisen yet where John Smith requests an address --

17 MS. MUTCHLER: Sure.

18 REP. SABATINA: -- and there's no way of tracking
19 down who John Smith is in the end.

20 MS. MUTCHLER: Right.

21 REP. SABATINA: Switching gears a little bit.

22 MS. MUTCHLER: And we see that a lot in election
23 years where folks want to do their opposition research and
24 find out about a candidate.

25 REP. SABATINA: Sure.

1 MS. MUTCHLER: They might use either an assumed
2 name or someone else.

3 REP. SABATINA: Sure.

4 MS. MUTCHLER: And you could -- I know there's
5 been legislation to require, like, affidavits or licenses.
6 But I think that gets into a bigger policy concern of the
7 flow of the information.

8 REP. SABATINA: Switching gears a little bit.

9 MS. MUTCHLER: Okay.

10 REP. SABATINA: What suggestions would you have
11 to curtail the, I guess, extraneous requests from
12 businesses for their own gain?

13 MS. MUTCHLER: I think that one of the pieces of
14 legislation that Chairman Adolph put forward has many very
15 strong components in it. And I think that I would
16 recommend kind of a two-part system.

17 REP. SABATINA: Okay.

18 MS. MUTCHLER: One is to follow what the Federal
19 Freedom of Information Act does, which it sets up a
20 bifurcated payment system. And if you are a commercial
21 requestor, then you pay a fee, like a labor fee.

22 REP. SABATINA: Okay.

23 MS. MUTCHLER: And you pay for those records in a
24 way that doesn't encroach upon if a citizen wants to track
25 how its government is operating, they get to do that at no

1 cost.

2 REP. SABATINA: Okay.

3 MS. MUTCHLER: I think that Illinois has included
4 a provision that flatly states in its legislation that this
5 law is not intended for commercial use. And I think that
6 language would give a lot of room to be able to help that.

7 REP. SABATINA: Okay.

8 MS. MUTCHLER: I think that commercial
9 requestors, just to give you some highlights, when we
10 testified before Chairman Metcalfe's Committee, someone
11 raised this very interesting request. And it might have
12 been one of his examples. Someone came and they wanted to
13 find out who got permits to build pools so that they could
14 have pool liners. You know, they were in a pool liner
15 business.

16 REP. SABATINA: Okay.

17 MS. MUTCHLER: We've had folks down in Delaware
18 County who filed a right-to-know request for everybody that
19 owns a dog, that has a dog license, because they were
20 starting a kennel business.

21 REP. SABATINA: Okay.

22 MS. MUTCHLER: We've seen out-of-state companies
23 that come in -- we see less of this now -- to try to obtain
24 tax records and then turn around and sell them. And I do
25 think that if the Legislature were to insert a section that

1 says this is not intended for commercial use as other
2 states do, and when there is a commercial use request,
3 instead of -- either prohibit it or set up a bifurcated
4 payment system so that they're -- at least the government
5 is at least recouping for that amount of work. That would
6 be one thought.

7 REP. SABATINA: Thank you very much.

8 MS. MUTCHLER: You're welcome.

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

10 MAJORITY CHAIRMAN ADOLPH: Thank you,
11 Representative.

12 Representative Glen Grell.

13 REP. GRELL: Thank you, Mr. Chairman.
14 Thank you for being here.

15 MS. MUTCHLER: Sure.

16 REP. GRELL: Could you tell me the current status
17 of the law or policy with respect to, again, names and
18 addresses? But I'm specifically asking about current,
19 former, and retired law enforcement officials.

20 MS. MUTCHLER: What the Right-To-Know Law says in
21 its current form is that home addresses are public record
22 unless you are a law enforcement officer, a minor, or a
23 Judge, or unless there is a safety concern that you can
24 demonstrate that the release thereof would cause harm and
25 it's delineated in the law.

1 REP. GRELL: Okay.

2 MS. MUTCHLER: And so what the Office of Open
3 Records has seen is cases where former law enforcement
4 officers have been covered. Undercover are also part of
5 that where their addresses aren't released.

6 REP. GRELL: Okay.

7 MS. MUTCHLER: Judges are part of that.

8 REP. GRELL: Okay.

9 MS. MUTCHLER: Retired cops, retired detectives,
10 corrections officers. That's a huge one.

11 REP. GRELL: They are or are not?

12 MS. MUTCHLER: They are protected. So their home
13 addresses are -- the agency is able to withhold the release
14 of their home addresses.

15 REP. GRELL: Okay.

16 MS. MUTCHLER: We just saw this with state
17 police.

18 REP. GRELL: Okay.

19 MS. MUTCHLER: State police, there was a request
20 for a great number of employees as part of this larger
21 Right-To-Know Law request. It involved all active and
22 retirees. State police said, look, we wouldn't even be
23 able to give you a delineation of who's undercover, who's
24 not. And we shared that view with them.

25 REP. GRELL: Okay.

1 MS. MUTCHLER: We ordered that they had met their
2 burden that those addresses don't get released.

3 REP. GRELL: Okay.

4 MS. MUTCHLER: Another area where protection is
5 also provided is if you're married to or living with a law
6 enforcement officer or a Judge. You know, that protection
7 has been extended as well.

8 REP. GRELL: Okay.

9 MS. MUTCHLER: But you've got to keep in mind
10 that that's up to the agency, not the Office of Open
11 Records. It's the agency who first determines whether you
12 fall into one of those protected categories. And that's
13 where the notice comes in.

14 REP. GRELL: Okay. That's very helpful.

15 MS. MUTCHLER: Good.

16 REP. GRELL: It was my understanding, from some
17 preliminary research that our office did, that the law only
18 covered current. And, in fact, we had drafted some
19 legislation to clarify that to include former and retired.
20 Maybe offline I can get some further direction on that.

21 MS. MUTCHLER: Sure.

22 REP. GRELL: Especially in a situation where I
23 think, as you said today, your year-to-date requests are 49
24 percent from inmates.

25 MS. MUTCHLER: Right.

1 REP. GRELL: I think that's probably a legitimate
2 concern not just of current law enforcement.

3 MS. MUTCHLER: It's a huge concern.

4 REP. GRELL: Sure.

5 MS. MUTCHLER: And one of the things that this
6 right-to-know request that we've been discussing -- and I
7 just want to underscore that I share the Chairman's view on
8 third-party notice and what it can do.

9 REP. GRELL: Okay.

10 MS. MUTCHLER: But just to give you some
11 examples, correction officers had called our office, some
12 who had been raped, some whose families had been
13 threatened.

14 REP. GRELL: Okay.

15 MS. MUTCHLER: There was a woman who was
16 absolutely beside herself because she had just testified in
17 a murder trial involving the death of her son in a gang
18 situation. She did not want her address released.

19 REP. GRELL: Sure.

20 MS. MUTCHLER: We had -- I don't remember the
21 number -- about 3,900 people who came to the Office of Open
22 Records and said, we have security concerns and here's what
23 they are.

24 REP. GRELL: Okay.

25 MS. MUTCHLER: And many of them were grave. And

1 so I do think that we've got to find a way to do it.

2 REP. GRELL: Okay.

3 MS. MUTCHLER: Because the flip side of it, to
4 the Chairman's point, is we had a right-to-know request
5 where somebody asked for pointblank public records. And a
6 Union got involved to try to stop it. And the Court
7 ordered release. And so he's right in the sense that, you
8 know, there's got to be this balance. And so we are still
9 a new agency finding that balance.

10 REP. GRELL: Okay.

11 MS. MUTCHLER: But retirees have been held to be
12 covered mostly through the case law.

13 REP. GRELL: That's what I was going to ask.
14 Just to close the loop, is it a matter of statute or policy
15 or case law that that protection extends? It's a blanket
16 protection for current, retired, and former. Is it by
17 policy, law, or --

18 MS. MUTCHLER: It's a blanket protection for law
19 enforcement. It doesn't say current in the law.

20 REP. GRELL: Okay.

21 MS. MUTCHLER: So we interpret that and the
22 courts have interpreted that to mean any law enforcement,
23 whether it's retired or not.

24 REP. GRELL: Okay.

25 MS. MUTCHLER: I do think it would be wise for

1 the Legislature to clarify that. That's a good area where
2 you can't have too much protection.

3 REP. GRELL: Okay. But we do have a piece of
4 legislation drafted just to make that little change?

5 MS. MUTCHLER: Yes.

6 REP. GRELL: I look forward to your input once
7 it's drafted.

8 MS. MUTCHLER: Sure.

9 REP. GRELL: Thank you very much.

10 MS. MUTCHLER: Thank you.

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

12 MAJORITY CHAIRMAN ADOLPH: Thank you,
13 Representative.

14 Representative Jim Christiana.

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

16 Good afternoon. Thank you for being here.

17 MS. MUTCHLER: Thank you.

18 REP. CHRISTIANA: As it relates to financial
19 data, I would just like to have a conversation.

20 MS. MUTCHLER: Sure.

21 REP. CHRISTIANA: Because while the intentions of
22 this law may have been very broad, I think at the core,
23 financial transparency is paramount in this discussion.

24 MS. MUTCHLER: Yes.

25 REP. CHRISTIANA: And I feel like those opponents

1 of transparency find ways, sometimes creative ways. Back
2 in Beaver County, our local newspapers had to go through a
3 lot of difficulties and jump through a lot of hoops just to
4 get some financial data that should be available.

5 MS. MUTCHLER: All right.

6 REP. CHRISTIANA: As it relates to the original
7 intentions of the law and trying to update it, I think I
8 would like to just focus our conversation on financial
9 data.

10 MS. MUTCHLER: Okay.

11 REP. CHRISTIANA: I think at the core, that is
12 the No. 1 responsibility in 2014, that people have access.

13 MS. MUTCHLER: Sure.

14 REP. CHRISTIANA: And as you mentioned early on,
15 online access to that data.

16 MS. MUTCHLER: Right.

17 REP. CHRISTIANA: Can you talk about what having
18 PennWATCH in place for a significant amount of time, how
19 much easier it is just to be able to point some of the
20 simple requests to an online database of State
21 expenditures?

22 MS. MUTCHLER: Sure.

23 REP. CHRISTIANA: Thank you.

24 MS. MUTCHLER: What we have seen is when the
25 Legislature wrote the 2008 version of this law, it had the

1 great foresight to give agencies the opportunity to say to
2 a requestor, if you want information and it's available on
3 a database, we can just point you to the database without
4 going through the, you know, kind of every step of this.

5 REP. CHRISTIANA: Okay.

6 MS. MUTCHLER: And so anytime you have online
7 records, as the Deputy Director mentioned, you see a direct
8 correlation to a decrease in Right-To-Know Law requests.

9 REP. CHRISTIANA: Okay.

10 MS. MUTCHLER: When PennWATCH was first unveiled,
11 we received a high number of calls where people wanted to
12 know what they could get and how they could get it.

13 REP. CHRISTIANA: Okay.

14 MS. MUTCHLER: And that, I believe, has
15 contributed to the reduction of Right-To-Know Law requests
16 in some measure. How to calculate that, I can't directly.

17 REP. CHRISTIANA: Sure.

18 MS. MUTCHLER: But I can say that in the calls
19 we've seen, people are very satisfied to be able to go get
20 the information that they're looking for, to the extent
21 that it's available, and provide it.

22 REP. CHRISTIANA: Okay.

23 MS. MUTCHLER: The only complaint that we have
24 heard about PennWATCH in this regard is that when agencies
25 put the information up, there's no backstop to determine

1 whether -- no enforcement mechanism to see if they've
2 actually really done it along those parameters.

3 REP. CHRISTIANA: All right.

4 MS. MUTCHLER: But having said that, I think it
5 seems to be working well and it seems to contribute to both
6 the core mission of the Right-To-Know Law and also citizen
7 access to records.

8 REP. CHRISTIANA: And while it's hard on the
9 State level to self-enforce itself and put penalties in
10 place when the State is operating a website, when we're
11 looking at School Watch that passed the House and is now in
12 the Senate, there was a pretty strict penalty in place for
13 school districts that did not comply.

14 MS. MUTCHLER: Yes.

15 REP. CHRISTIANA: And that was the withholding of
16 State funds. There are safety nets so that a secretary
17 can't just arbitrarily withhold funds. But all public
18 schools I think should be held to the same standard that
19 the State is holding itself to. And I do think we have to
20 have strict penalties in place.

21 MS. MUTCHLER: Sure.

22 REP. CHRISTIANA: I think this is important.
23 When I look at the Children's Hospital of Pennsylvania
24 where they don't have a single piece of paper, I feel like
25 when it comes to financial transparency, the days of having

1 to fill out a right-to-know request to see where tax
2 dollars are being spent I feel is long overdue.

3 MS. MUTCHLER: Yes.

4 REP. CHRISTIANA: And while this law went 1,000
5 miles in transparency, I think we need to work together to
6 get these things not just in an introduced bill form but
7 implemented in law as quickly as possible.

8 MS. MUTCHLER: Yes.

9 REP. CHRISTIANA: Because what we're seeing now
10 is the more data that's available, the more access people
11 want.

12 MS. MUTCHLER: Yes.

13 REP. CHRISTIANA: And then your costs are going
14 up. And now we're forced with a pretty significant budget
15 increase.

16 MS. MUTCHLER: Yes.

17 REP. CHRISTIANA: So I think we need to rapidly
18 work on getting a lot of this data online. And I will say
19 there are some unintended consequences in Harrisburg
20 because of this law.

21 MS. MUTCHLER: Sure.

22 REP. CHRISTIANA: There's people wanting data for
23 the wrong reasons. I think they're seeing it in Washington
24 with the Freedom of Information Act to the FDA to get
25 information. And then pharmaceuticals companies or

1 investors are making decisions for financial gain.

2 MS. MUTCHLER: Yes.

3 REP. CHRISTIANA: My concern is when we revisit
4 this law, we don't allow those unintended consequences to
5 retreat from transparency. I think we need to take a look
6 at how we can provide transparency, fix these unintended
7 consequences, and allow people to see the access to their
8 dollars.

9 MS. MUTCHLER: Yes.

10 REP. CHRISTIANA: And as well, I think we need to
11 talk about on a local level the information from meetings
12 and executive sessions that people get frustrated with.
13 And I, too, think that is the second step of transparency.

14 Thank you for your work.

15 MS. MUTCHLER: Sure.

16 REP. CHRISTIANA: And, Mr. Chairman, thank you
17 for calling on me.

18 MAJORITY CHAIRMAN ADOLPH: Thank you,
19 Representative.

20 Representative Gary Day.

21 REP. DAY: Thank you, Mr. Chairman.

22 And thank you for being here today.

23 MS. MUTCHLER: Sure.

24 REP. DAY: Just quickly a qualifying question
25 from what you had said earlier.

1 MS. MUTCHLER: Sure.

2 REP. DAY: Do I understand this correctly, in
3 addresses that would be requested from, say, a school
4 district, barring the exceptions you said, law enforcement,
5 Judges, other security threats, let's say, that your office
6 would determine that they need to be provided; is that
7 correct?

8 MS. MUTCHLER: The way it works, sir, is this:
9 When a requestor files the right-to-know request, it is the
10 agency that makes the initial determination.

11 REP. DAY: Right. So if they do it the way I
12 just said, it would be done. If they didn't, what would
13 your office rule?

14 MS. MUTCHLER: Well, if it came to us --

15 REP. DAY: Right.

16 MS. MUTCHLER: -- the Office of Open Records
17 would conduct that appeal to determine whether the agency
18 met its burden of proving that these records were not
19 available.

20 REP. DAY: Okay.

21 MS. MUTCHLER: But for the most part, we would
22 order release of those records. You know, that's the
23 general -- home addresses are available. So unless they
24 can meet the burden of proof to say we have a security risk
25 or whatever, they're law enforcement, a Judge, or whatever,

1 it would be ordered to be released.

2 MR. BYERLY: And just to interject real quick.

3 REP. DAY: Yes.

4 MR. BYERLY: There is one caveat. There is
5 currently an injunction in place --

6 MS. MUTCHLER: Yes. That's right.

7 MR. BYERLY: -- for school employees. So that's
8 in the courts. Under the law, they would considered
9 public.

10 REP. DAY: Okay.

11 MR. BYERLY: But the Commonwealth Court now has
12 an in-place injunction.

13 REP. DAY: So right now your office would say
14 pending the --

15 MR. BYERLY: Right.

16 REP. DAY: -- outcome of that, correct?

17 MS. MUTCHLER: Yes. We would actually right now
18 say it's not available under the injunction if you're a
19 public school employee.

20 REP. DAY: Okay.

21 MS. MUTCHLER: The Office of Open Records, if the
22 appeal came to us -- we would say -- and the agency denied
23 it, we would deny it citing the injunction. And those
24 addresses at this juncture would not be released per Court
25 order. Does that make sense?

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REP. DAY: You would actually deny it?

MS. MUTCHLER: Yes.

REP. DAY: And the decision is still not made yet?

MS. MUTCHLER: That's right.

REP. DAY: So the person would walk away thinking I'm not entitled to this information?

MS. MUTCHLER: Well, what they would know --

REP. DAY: Would we notify them?

MS. MUTCHLER: What would happen is when the appeal comes to us and we look, we would say to the requestor and the agency, this appeal has come to us. You've asked for this. The courts have said right now this is off the table.

REP. DAY: Right.

MS. MUTCHLER: We would deny it.

REP. DAY: Okay.

MS. MUTCHLER: And both parties would know that.

REP. DAY: Well, an injunction is wait until we make the decision. It's not off the table.

MS. MUTCHLER: But it's for the Court to make the decision for us. We don't have a mechanism that says you can wait. We have to provide the decision within 20 business days.

REP. DAY: In your first answer -- I didn't want

1 the qualifying question, but now I have two more.

2 MS. MUTCHLER: Okay.

3 REP. DAY: In your first answer, you had said --
4 I forget the phrase that you used -- if the documents were
5 available. Is that back to the old definition of if
6 there's not a public document to give, you don't have to
7 create it and give?

8 MS. MUTCHLER: That is accurate. The law says
9 you don't have to create a public document. But let me try
10 to clarify this so I can make sure that you understand how
11 this works.

12 REP. DAY: Okay.

13 MS. MUTCHLER: When a citizen files a
14 right-to-know request with an agency and say they filed and
15 asked for the home addresses of public school employees in
16 a district.

17 REP. DAY: Okay.

18 MS. MUTCHLER: The agency has five business days
19 to respond to them.

20 REP. DAY: Okay.

21 MS. MUTCHLER: They can invoke a 30-calendar-day
22 extension.

23 REP. DAY: Okay.

24 MS. MUTCHLER: At the end of the 30 days, they
25 say to the requestor, either we're giving you your records

1 or your records are denied.

2 REP. DAY: Okay.

3 MS. MUTCHLER: What most school districts would
4 say -- all school districts would say right now it is
5 denied per the Court injunction.

6 REP. DAY: Okay.

7 MS. MUTCHLER: You can appeal to the Office of
8 Open Records. It would come to us. We would review the
9 case and be sure that this is what was, in fact, being
10 asked for.

11 REP. DAY: Okay.

12 MS. MUTCHLER: Our final determination that would
13 be issued would say, you asked for public school employee
14 home addresses, the agency denied you citing the Court
15 injunction.

16 REP. DAY: Okay.

17 MS. MUTCHLER: We agree with the agency. This
18 request is denied. If you don't agree with us, you can
19 appeal to court.

20 REP. DAY: Commonwealth Court, right?

21 MS. MUTCHLER: Commonwealth Court. Well, no, it
22 would be -- for a local school district, it would be the
23 Circuit Court.

24 REP. DAY: Okay.

25 MS. MUTCHLER: But if it was a Commonwealth

1 agency, it would be to the Commonwealth Court.

2 REP. DAY: Thank you.

3 MS. MUTCHLER: Sure.

4 REP. DAY: So a municipality would be the
5 Commonwealth Court; is that right?

6 MS. MUTCHLER: A municipality would be to the
7 Circuit Court, the Court of Common Pleas.

8 REP. DAY: Okay.

9 MS. MUTCHLER: It's my old Illinois coming in
10 there. Sorry. It's called the Court of Common Pleas here.

11 REP. DAY: All right. I thought my qualifying
12 question would steer me away from this, but with our
13 discussion I have to ask you this.

14 MS. MUTCHLER: Sure.

15 REP. DAY: I'm curious. I understand what you're
16 faced with and the decision that you have to make.

17 MS. MUTCHLER: Yes.

18 REP. DAY: Is there a document, did they make the
19 right determination at the local level? But I've often
20 wondered. There's legitimate information in this request.

21 MS. MUTCHLER: Yes.

22 REP. DAY: And there's also the concern I think
23 what we're balancing here is employee safety and privacy
24 with their home address.

25 MS. MUTCHLER: Sure.

1 REP. DAY: So if there was a data record that was
2 name, years of services, salary, health benefits, other
3 compensation, address, could we -- I mean, should the
4 Legislature create this document, make the school district
5 create this document? Because what a lot of people want to
6 really know is not where your house is for each employee.
7 They want to know who's in the school district where they
8 work and who's not numberwise.

9 MS. MUTCHLER: Yes.

10 REP. DAY: I think that is fair. That's where my
11 individual decision comes down. So could you provide this
12 data? Should we create that form so that people would know
13 what are the salaries? What's the head count? How many
14 people are in the school district? How many employees?
15 Where are they? Where do they live generally? We could
16 say by school district. Are they in the district? Are
17 they out of the district? Does this ever come into this
18 process in your office?

19 MS. MUTCHLER: It does.

20 REP. DAY: Okay.

21 MS. MUTCHLER: And if a requestor -- I wish they
22 were as articulate in asking that way. And if they ask for
23 that, that would be available even absent the Court
24 injunction because there's no identifiers there.

25 REP. DAY: Right.

1 MS. MUTCHLER: You're just asking for how many
2 employees are there? Where do they fall within the
3 district?

4 REP. DAY: What they get paid.

5 MS. MUTCHLER: And what their salary is.

6 REP. DAY: Right.

7 MS. MUTCHLER: That's correct.

8 REP. DAY: Okay. I mean, I think that's
9 reasonable information.

10 MS. MUTCHLER: Sure.

11 REP. DAY: And I thank you for indulging me with
12 that question that I thought I was going to be able to get
13 around but I needed to ask you.

14 MS. MUTCHLER: Sure.

15 REP. DAY: I have a different question. I've
16 talked with the Chairman about this. Your budget request
17 was about \$2.2 million, I think; is that correct?

18 MS. MUTCHLER: Yes.

19 REP. DAY: And you know, your building, it's a
20 new agency so it's growing and you've outlined the
21 different types of work.

22 MS. MUTCHLER: Yes.

23 REP. DAY: The mission of the office is to
24 enforce the State's Right-To-Know Law, serve as a resource
25 for citizens and public officials and the media in

1 obtaining public records.

2 MS. MUTCHLER: Right.

3 REP. DAY: This is going to be a fun question for
4 you. You're going to like this one.

5 MS. MUTCHLER: You're kidding.

6 REP. DAY: So your office -- are you ready for a
7 fun one finally, a fun question?

8 MS. MUTCHLER: Sure.

9 REP. DAY: So your office is the enforcer and
10 decision-maker on what is a public document and helping
11 with that decision-making so it's uniform. Currently local
12 governments, counties, municipalities, school districts,
13 and other authorities spend \$25 million on advertising fees
14 in local papers to advertise their public meetings.

15 MS. MUTCHLER: Right.

16 REP. DAY: So if we would -- I'm interested in
17 kind of your opinion but I want to tie it into your office.

18 MS. MUTCHLER: Okay.

19 REP. DAY: If we would create a statewide
20 searchable database potentially with membership for those
21 corporate interests that you talked about or just lawyers
22 that are working in zoning cases or other municipal work so
23 they would actually pay subscription fees into this, we
24 would save this 25 million for all those local agencies.
25 And I wouldn't say you save all the cost. I would say that

1 these municipalities would have to pay. They'd save about
2 \$12 million. We'd cut the cost in half.

3 That's one of those magic tricks where you'd have
4 to figure it out or whoever was in charge of it how we
5 charge these fees.

6 MS. MUTCHLER: Right.

7 REP. DAY: I got a little smile over here. But
8 he'd have to figure it, right? Is that why?

9 MR. BYERLY: Exactly.

10 REP. DAY: I've been in that position. So that's
11 why I said that.

12 MR. BYERLY: That's right.

13 REP. DAY: But if you take that \$25 million cost
14 and you say you're going to save 12 million, the 12 million
15 is going to go into creating that searchable database. And
16 now all of a sudden the problem that you have between 2.2
17 and 1.9 gets dwarfed by \$12 million if we would locate this
18 in your office. And I think it's a good match to be there.

19 MS. MUTCHLER: Please don't.

20 REP. DAY: Is that because of your background?

21 MS. MUTCHLER: No. No. No. It's not that.

22 REP. DAY: Okay.

23 MS. MUTCHLER: What we see is -- I mean, I can't
24 be any plainer than this. We are overwhelmed with the
25 volume. And so I think that a system like that would do

1 two things.

2 REP. DAY: Okay.

3 MS. MUTCHLER: I believe that the correct initial
4 decider and enforcer of records is the agency that holds
5 them.

6 REP. DAY: Right.

7 MS. MUTCHLER: And I think if you were to put the
8 Office of Open Records in the position of saying at the
9 initial stage, this is in and this is out, I think that
10 that disenfranchises the local government who has the best
11 knowledge and handle on their records.

12 REP. DAY: Okay.

13 MS. MUTCHLER: I think that the mechanism that
14 this Legislature set up, which I might remind the
15 Legislature is only one of three in the United States to
16 have an agency like the Office of Open Records that reviews
17 as a quasi judicial agency the initial decision about the
18 local agency.

19 REP. DAY: Okay.

20 MS. MUTCHLER: I think that's a smart setup.

21 REP. DAY: Okay.

22 MS. MUTCHLER: And I also think it's even a
23 smarter setup to say that people have a way to challenge
24 our decisions by going to court. That is a safety net that
25 I think is good.

1 REP. DAY: Any other points on that? Do you know
2 what I'm talking about with the local advertising? Are you
3 aware of it? All right. I made my point. I'm going to
4 send you some information. I'd like you to keep an open
5 mind about the idea.

6 MS. MUTCHLER: Sure.

7 REP. DAY: It's not exactly what you repeated
8 back in your answer.

9 MS. MUTCHLER: Okay.

10 REP. DAY: It's a little bit different. And I'll
11 send you information on that and hope you will consider it.

12 MS. MUTCHLER: Sure.

13 REP. DAY: I think it's an excellent funding
14 source for your office.

15 MS. MUTCHLER: Okay.

16 REP. DAY: And I think that relationship between
17 your office and these local agencies -- it would be a
18 different function, but it would be the same relationship.
19 And that's why I think it's good to be located.

20 MS. MUTCHLER: We'll look forward to it.

21 REP. DAY: Thank you.

22 MS. MUTCHLER: Thank you.

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

24 MAJORITY CHAIRMAN ADOLPH: Thank you very much,
25 Representative.

1 I'd like to thank Chairman Metcalfe for being
2 here. Executive director, Deputy Executive Director, thank
3 you so much for being here.

4 MS. MUTCHLER: Thank you for having us.

5 MR. BYERLY: Thank you.

6 MAJORITY CHAIRMAN ADOLPH: We appreciate your
7 testimony.

8 MS. MUTCHLER: Thank you.

9 MAJORITY CHAIRMAN ADOLPH: I understand some of
10 the hardships the law has put your office under. We do
11 appreciate that. The Legislature also knows that a bill
12 could be improved.

13 MS. MUTCHLER: Sure.

14 MAJORITY CHAIRMAN ADOLPH: No question about it.

15 MS. MUTCHLER: Sure.

16 MR. BYERLY: Yes.

17 MAJORITY CHAIRMAN ADOLPH: I think the comments
18 made by Representative Christiana has a lot to look into.

19 MS. MUTCHLER: Yes.

20 MAJORITY CHAIRMAN ADOLPH: I'm looking forward to
21 working with you.

22 MS. MUTCHLER: Thank you.

23 MAJORITY CHAIRMAN ADOLPH: Whatever your future
24 is, you know, best of luck to you.

25 MS. MUTCHLER: Thank you, Mr. Chairman.

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MR. BYERLY: Thank you.

MAJORITY CHAIRMAN ADOLPH: Thank you.

For the members of this Committee, we will reconvene at 2 o'clock for community colleges. Thank you.

(The hearing concluded at 1 p.m.)

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I hereby certify that the proceedings and
evidence are contained fully and accurately in the notes
taken by me on the within proceedings and that this is a
correct transcript of the same.

Jean M. Davis
Notary Public