

**Testimony of Terry Mutchler
Executive Director, Office of Open Records**

*House of Representatives
Appropriations Committee
The Honorable William F. Adolph, Jr., Chair
February 20, 2014, 11 A.M.
Main Capitol, Room 140*

Mr. Chairman, members of the Committee.

Thank you once again for the opportunity to appear before the House Appropriations Committee and talk with you about the very important work performed by the Office of Open Records.

My name is Terry Mutchler and I have had the privileged of serving as the state's First Executive Director of the OOR. And, in coming before you this year, this is the last year of my six-year appointment, which ends in April.

In what could be my final address to this Committee as Executive Director, I would like just take a moment to say that Legislature deserves an immeasurable amount of credit for crafting a law that by all measures is a success.

- Citizens have obtained hundreds of thousands of public records of their government – many that have resulted in tax payers saving money, like the request that showed several fired employees stayed on the payroll, or revealed that a city received a 1 Million anonymous gift that they didn't want to disclose.
- Public officials have tightened the ship as a result of the sunshine that has been placed on government shadows.
- The Supreme Court has declared that this law is a “legislative success” while also underscoring the need to fix some components particularly related to ensuring that citizens have notice when their records are sought.

When Senate Majority Leader Dominic Pileggi wrote this law, and the Legislature adopted it, I can say without reservation that you gave the Office of Open Records the tools and the support to advance transparency in Pennsylvania government.

While critics of the Law abound, they cannot deny that citizens have far greater access to records today than they did prior to 2008. Our national ranking has drastically improved. Our RTKL process and procedure rivals that of any state in the country. Our model has been studied and implemented by other governments. Our support of citizens in search of records is unparalleled in government.

I am grateful for the continued support of members of this committee and for the countless opportunities I have had to talk with members of the House about both budget matters and substantive issues in this young law.

Each year, the General Assembly has reinforced its commitment to open government by increasing the OOR's budget. I remain extremely grateful for those increases. With that budgetary support, the Legislature enabled the OOR to build a solid foundation and framework that will endure for many years to come. However, we cannot grow complacent even when applauding how far we have come. With the foundation laid and the framework firmly in place, now is the time to do the finishing work on this law.

The OOR stands at a pivotal crossroad which will determine both the direction and impact of the RTKL. The selection of an Executive Director is essential to the mission of open government in Pennsylvania. My purpose here today is not to use this as a forum for reappointment – although I will be talking with the Governor's office with the hope that I will be appointed again – but I must highlight the need for the appointment of an Executive Director that emphatically supports open government and is cognizant of the importance true transparency plays in a free society.

Today, I would like to focus on the proposed budget and how that budget will affect the OOR and ultimately the citizens of the Commonwealth. Created in 2009, the OOR is an independent quasi-judicial agency charged with implementing and enforcing the Right to Know Law (RTKL). The Office and RTKL draw their purpose from the reality that government will not earn the trust and support of the governed unless it is open and transparent. An uninformed public cannot hold its government accountable.

A good government allows access to its records and a strong government withstands the honest assessment that transparency brings. However, the responsibility for good government lies not only with those who govern, but also with the governed. Burdening government agencies with frivolous commercial requests or self-serving political inquiries can equally weaken government. We must work together to achieve maximum effectiveness and efficiency.

Here are some examples that agencies raise regarding the difficulty of balancing openness with workload:

- 100s of hours of government, tax-funded work to provide one individual a mailing list of home addresses to advance his organization
- Another requestor that filed 300 requests in a short time – later to discover he lost an election and in essence wanted to harass the new board.
- An inmate requestor that files hundreds of requests for records – targeting the DA and the Judge who put him behind bars.
- Commercial requestor seeking a mailing list of dog licenses to start up their new kennel business.

We cannot shy away from facing the reality that with this law comes consequences – sometime unintended.

Last year, I testified that the proposed budget would cripple the OOR and defeat the General Assembly's intent for open government in Pennsylvania. I am cautiously optimistic that this year's proposed budget, while not solving all the issues faced by the OOR, is a strong step in the right direction. The proposed increase would allow the OOR to hire at least two additional people as well as cover increasing pension and personnel costs, leasing of computers and printers, postage, supplies, appearing in court, trainings across the state, hearing expenses, and thousands of dollars to process the OOR's payroll. We are under court order to conduct hearings, which typically cost between three to five thousand dollars; and the law requires that we conduct hearings regionally.

However, one of the biggest challenges as Executive Director is proposing a budget that will enable the OOR to meet its statutory duties while facing uncertainty in regard to vital facts. Each year the OOR has seen record numbers and substantial increases in its workload. Each year I expect to finally report that the number of appeals has peaked. They have not. To date, the OOR has issued over 9,000 final determinations. This past year once again produced record numbers. In 2013, the OOR decided 2,475 appeals. That is an astounding 115% increase from the 1,155 in 2009 and represents over a 14% increase from 2012. Additionally, as required by the RTKL, the OOR responded to over 700 right-to-know requests seeking records from the OOR. In accordance with its statutory mandate, the OOR continued to respond to thousands of citizen and agency inquiries, litigate or monitor nearly 250 active court appeals, and conduct dozens of trainings across the Commonwealth.

Based on some unknown components, the proposed budget could still result in a retreat from the Legislature's goal of transparent and honest government. Even when past budgets have been approved, the OOR has lost significant funds due to blocked hires and the re-budget process. Additionally, if amendments to the RTKL do not specifically require a larger agency to give the OOR administrative, human resource and IT support or provide the OOR additional budgetary increases, the OOR will again face budgetary shortfalls that will cripple its ability to meet its statutory responsibilities.

It must also be noted that if Penn State University and other state related institutions are added to the Office's jurisdiction, that the OOR would need additional emergency funding to meet the increase in appeals, training, and court cases.

Finally, I would be remiss if I didn't ask this Committee to consider a funding increase for the Pennsylvania Historic Museum Commission. This law puts a direct strain on their workload. They are the ones responsible for records retention – and how long agencies must keep a record. Just recently reading the news, you can see that even if you deem a record public, it doesn't do much good if an agency doesn't maintain them properly. PHMC is in charge of that – and my hope is that the Committee will consider the very deep impact this law has on them.

Being very cognizant of the Governor's efforts to bring the Commonwealth through the current economic issues it faces, I am even more appreciative of the steps he has taken to ensure that the OOR is funded and able to carry on the mission for more government transparency. As we continue to determine how big and far reaching this task is, I can only ask that we all continue to work together to accomplish and fund the important mission the General Assembly gave to the Office.

Thank you, and I hope to see you next year.