



**pennsylvania**  
OFFICE OF OPEN RECORDS

*House State Government Committee  
The Honorable Daryl D. Metcalfe, Chair  
March 22, 2016*

**Written Testimony of Erik Arneson  
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Senate Bill 411 would make numerous changes to the Right-to-Know Law (RTKL). Following are summaries of the major provisions included in SB 411, printer's number 1335.

#### **Office of Open Records Procedural Issues**

SB 411 includes numerous provisions designed to streamline and improve the appeal process at the Office of Open Records (OOR). These include (1) clarifying the timeline under which agencies must respond to RTK requests, (2) clarifying the deadline for filing an appeal, (3) clarifying what a requester must provide to the OOR for an appeal to be sufficient, (4) clarifying that the OOR has the authority to conduct *in camera* review of records, and (5) allowing the OOR's appeals officers to extend the deadline for deciding an appeal by up to 15 days or, if a hearing or *in camera* review is necessary, by up to 90 additional days.

These provisions are important. Holding a hearing or conducting an *in camera* review requires significant work on the part of the OOR appeals officer tasked with that responsibility. In fact, 90 days may be too short – particularly if a hearing is necessary.

#### **State-Related Universities**

The proposed changes to Chapter 15 of the RTKL will dramatically increase the amount of information made available by the four state-related universities (Temple, Pitt, Penn State, and Lincoln). Each of the universities will be required to develop online databases which include reams of financial and statistical data. The public will be able to freely search, sort, and download information from the online databases.

All four universities will be required to provide the salaries of all officers and directors, along with the top 25 salaries of employees who are not officers or directors. For the three universities with more than 2,500 employees (Temple, Pitt, and Penn State), the changes will also require the disclosure of the next 175 salaries, presented in ranges.

Importantly, SB 411 will also apply the RTKL to campus police departments at both state-related and state-owned universities in the same manner it currently applies to municipal police departments.

### **Commercial Requests**

“Commercial purpose” is added as a defined term. Among other things, it excludes the news media, journalists, authors, educational institutions, and noncommercial scientific institutions from the commercial fee authorized in the proposed new Section 1307(g.1), which would allow agencies to charge for the processing of commercial requests based on the hourly wage of the lowest-paid employee capable of providing the response. However, the first hour of search and retrieval time for all commercial requests from a single requester within a 90-day period is excluded from the commercial fee.

The proposed new Section 1307(i) makes it clear that any fee charged under the RTKL can be appealed to the OOR.

### **Inmate Requests**

The proposed new Section 508 would limit inmate RTK requests to 11 categories of records, and only if there are no other policies or procedures in place for the inmate to obtain the requested information. The bill defines “inmate” to ensure that pre-trial detainees will continue to have full access to the RTKL.

In addition to the burden that inmate requests put on agencies (most dramatically, though far from exclusively, the Department of Corrections), inmates are also responsible for a disproportionate share of appeals to the OOR. Inmate appeals accounted for 48% of the OOR’s caseload in 2015. (Note that *caseload* and *workload* are different. Although inmate appeals do represent a significant burden on the OOR, they tend to be somewhat less complex.)

### **Home Addresses**

SB 411 has two provisions affecting the release of agency employee home addresses.

First, the proposed new Section 504(c) would require each commonwealth and local agency to develop a policy allowing employees to request that the agency withhold their home address if they believe the personal security exception in 708(b)(1)(ii) applies. (Employees could also argue that any of the other exceptions applies, if they believe one does.) The agency would be required to review all such submissions and inform the employee of its decision.

Second, the proposed amendments to Section 708(6)(i)(C) would allow the home address of every employee of “a commonwealth agency, judicial agency, legislative agency, or local agency” to be withheld.

It’s not necessary to include both provisions. I believe the first approach appropriately addresses concerns expressed in various court rulings since the RTKL was enacted and strikes a

good balance. If the General Assembly decides that something more like the second approach is better policy, I would respectfully request two changes: (1) that Section 708(6)(i)(C) be returned to its current language, and (2) that a new exception be added to allow agencies to withhold the home address *of an employee of that agency*. As currently written, I'm concerned that the proposed amendments to Section 708(6)(i)(C) could lead to significant confusion.

### **Emergency Dispatch Provisions**

The proposed new Section 708(b)(18)(iii) will allow agencies to withhold the home address of an individual who accesses emergency dispatch. This is an effort to protect victim information.

At the same time, the proposed new definition of "time response log" will make clear what information must be made available under Section 708(b)(18). Most pertinently, the information to be made available will include "the address of the incident or the street block identifier, the cross street or mile marker nearest the scene of the incident." This will allow the public to appropriately and properly review the timeliness of emergency responses.

### **Records Presented to a Quorum at a Public Meeting**

The proposed amendment to Section 708(b)(10) will clarify that records presented to a quorum of an agency for deliberation are public records, regardless of whether a vote occurs at the meeting. There have been numerous reported cases of public bodies distributing documents at a public meeting, discussing those documents in detail at the public meeting, and then refusing to provide copies to others in attendance at the meeting because no vote was taken.

### **Final Safety Inspection Reports**

The proposed amendment to Section 708(b)(17) will establish that final safety inspection reports may not be withheld under the noncriminal investigative exemption. This will ensure that the public has access to such final reports.

### **Volunteer Emergency Responders**

The proposed new Section 708(b)(32) will exempt records of volunteer fire companies, volunteer ambulance companies, and similar volunteer organizations. It was never intended that Act 3 of 2008 would cover these organizations. Courts in various counties have reached different conclusions, with some holding that the RTKL does not apply to such organizations and others holding that it does, creating an inconsistent standard across the state.

### **Parties to Litigation**

The proposed addition of Section 506(a)(1.1) will allow agencies to deny records requests made by a party to litigation if the request is material to a pending civil proceeding to which the agency is a party. Some agencies have received RTK requests related to pending civil litigation which appear to be made in lieu of the long-established discovery process.

## **Personal Financial Information**

The proposed amendments to the definition of “personal financial information” and the proposed addition of Section 708(b)(6)(iv) will work in concert to appropriately protect truly personal information (e.g., individual employee contributions to retirement plans and investment options) while ensuring public access to aggregated data which can be used to ensure agencies are held accountable for overall spending decisions. A related amendment to Section 708(b)(6)(i)(B) would exempt the number, names and ages of an employee’s dependents.

## **Municipal Authority Payment Records**

The proposed new Section 708(b)(5.1) would allow agencies to withhold payment records of a person receiving services from a municipal authority, a municipality, or a cooperative that provides water, sewer, electricity, storm water, natural gas, or a similar service.

## **Pennsylvania Interscholastic Athletic Association**

The proposed new Section 307 is not as significant as it might first appear. The PIAA has been covered by the RTKL since the current version was enacted in 2008. SB 411 would classify the PIAA as a local agency, rather than a Commonwealth agency. In practice, this is a minor distinction. For example, it would mean that any appeals of OOR Final Determinations involving the PIAA would be heard in the Cumberland County courts rather than by the Commonwealth Court. However, to date, the OOR has not received a single appeal involving a RTK request submitted to the PIAA.

## **Other Provisions**

SB 411 will also: (1) require agencies to register their opens record officers with the OOR for purposes of allowing the OOR to maintain a complete listing, (2) clarify what donor information may be withheld by agencies, (3) clarify that an agency’s account numbers, etc., may be withheld, (4) add the trade secret exception and the donor information exception to the list of exceptions which apply to financial records, (5) clarify the OOR’s status as an independent agency with support provided by DCED, and (6) require the OOR to promulgate regulations, with initial rulemaking being initiated by December 31, 2016. There are also numerous minor clarifications throughout the bill.

Thank you for your interest in SB 411 and the Right-to-Know Law. If any member of the House State Government Committee would like additional information, I can be reached by email at [earneson@pa.gov](mailto:earneson@pa.gov) and telephone at (717) 346-9903.

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Thank you, Chairman Metcalfe, Chairman Cohen, and members of the House State Government Committee. Good morning.

Senate Bill 411 would make numerous improvements to the Right-to-Know Law. I provided written testimony that goes into greater detail, so in the interest of time I'll provide a quick overview of the most significant provisions.

The bill will streamline and improve the appeal process at the Office of Open Records, quite a boring topic to discuss but essential to give us tools necessary to better manage our caseload. For example, holding a hearing or conducting an *in camera* review of records requires significant work on the part of the OOR Appeals Officer. Open government is good government, and these changes will make the law work better for citizens.

The bill makes reams of financial and statistical data instantly available from the four state-related universities – Temple, Pitt, Penn State, and Lincoln. The public will be able to freely search, sort, and download information from the online databases.

Importantly, the bill will also apply the Right-to-Know Law to campus police departments at both state-related and state-owned universities in the same manner it currently applies to municipal police departments.

This bill allows agencies to charge for the processing of commercial requests based on the hourly wage of the lowest-paid employee capable of providing the response.

The bill limits inmate requests to 11 categories of records, and only if there are no other policies or procedures in place for the inmate to obtain the requested information.

The bill currently has two provisions affecting the release of agency employee home addresses. While some would argue that neither provision is necessary, it is clear that both provisions are not necessary.

The first would require each commonwealth and local agency to develop a policy allowing employees to request that the agency withhold their home address if they believe the personal security exception – or some other exception – applies. The agency would be required to review all such submissions and inform the employee of its decision.

The second would simply allow the home address of every employee of a commonwealth agency, judicial agency, legislative agency, or local agency to be withheld.

As I said, it's not necessary to include both provisions. I believe the first approach appropriately addresses concerns expressed in various court rulings since the Right-to-Know Law was enacted and strikes a good balance. However, if the General Assembly decides that something more like the second approach is better policy, I would respectfully request that its application be limited to the home addresses of employees of that agency.

Overall, Senate Bill 411 represents a strong step forward for the Right-to-Know Law. It can be improved, and there is no doubt that other amendments will be considered when Senate Bill 411 advances. Indeed, I anticipate having a few requests on behalf of the Office of Open Records.

As the House State Government Committee considers the bill and any proposed amendments, I will be happy to play whatever role you think would be most helpful.

Finally, Mister Chairman, although this does not directly relate to the bill itself, I'm pleased to report that following the House Appropriations Committee budget hearing, I established an internal working group for our draft regulations. I'm personally involved in that process and will continue to push it forward.

Thank you again for inviting me to testify. I'll be happy to answer any questions.

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