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# SENATE BILL 411
# RIGHT-TO-KNOW LAW AMENDMENTS

PRESENTED TO THE
HOUSE STATE GOVERNMENT COMMITTEE

BY

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Harrisburg, PA

On behalf of the County Commissioners Association of Pennsylvania (CCAP), representing all 67 counties in Pennsylvania, I write to share our support for Senate Bill 411. This legislation amends the state's Right-to-Know Law based on our experience since the enactment of Act 3 in 2008.

We believe that government has responsibility for maintaining records of its actions, and records of the broad range of public transactions. This responsibility includes retaining records as appropriate for the use of future generations, making them accessible for individual use, and making them available as a means of promoting governmental accountability. We believe there is a balance that must be maintained among access, privacy and security concerns.

As you know, in the 2007-2008 legislative session, the General Assembly undertook significant work to update the Right-to-Know Law, which ultimately became Act 3 of 2008. While retaining some of the language of prior law, Act 3 also made changes to definitions, requests for access, electronic access, retention, response standards and redaction. Most important, it changed the presumption on records and burden of proof on their disclosure; rather than a limited number of records being open and the burden of proof being on the requester, all records became open unless covered under an exception and the burden of proof falls to the government agency to show that a record meets an exception.

Contrary to what many might suppose, our Association supported the rewrite, and invested a considerable amount of time working with all interested parties in crafting what became Act 3. The issue for us was that the prior law was written in an era of manual typewriters, and gave us no guidance on the scope and nature of open records in an age of new media and technologies.

In general, the law has provided us the guidance we need, while striking an appropriate balance between the public's need for access and the privacy rights of the individuals we serve. That said, with seven years' experience under the law, there are some common concerns that arise on a regular basis. Chief of these is the volume of requests we get from commercial ventures, which file requests that amount to data mining for commercial purposes; our belief is that the law is intended to allow citizens – corporate or individual – to monitor the activities of their government, not to use government resources for private profit. Second, there are recurring issues of the dividing line of personal privacy versus public access, often revolving around addresses and related matters.

In this context, we welcome the amendments incorporated in Senate Bill 411 that would make several changes to existing law, many in response to concerns that have been raised since the enactment of Act 3. Following is commentary on several of the bill's provisions that would have a particular impact on county government.

**Requests for Commercial Purposes**

Counties, like other local governments, have reported that the greatest increase in requests under the new Right to Know Law are for records to be used for commercial purposes, including information regarding excess proceeds from tax sales, unclaimed funds, environmental sites

assessments, union payrolls, bid packages, contracts and RFPs, and questionnaire and research projects. While this information may be available for purchase elsewhere, companies and other organizations have found that they can get this information through public records and are turning to Right-to-Know requests as a way to limit their own expenses, but at the expense of the taxpayer instead.

Senate Bill 411 would both require a written request for a record to include a statement indicating whether the requester intends to use the record for a commercial purpose, and would permit an agency to assess additional search and review fees when records are requested for a commercial purpose. While we believe our members would support a fee differential for records obtained for commercial purposes to provide resources to address the excessive demands of such requests, we would note it is unclear to what extent additional fees would deter the underlying abuses of Right-to-Know requests for purely private profit motives.

**Requests by Inmates**

Counties have reported an ongoing issue with time-consuming requests from prison inmates. Sometimes, these requests seek records that are not in the county's possession or that do not even exist, but the agency is required to respond to all requests and to invest additional time if an appeal is taken. While section 506(a)(1) of the Right-to-Know Law provides an exception for disruptive requests, allowing an agency to deny a requester access to a record if the requester has made "repeated requests for that same record, and the repeated requests have place an unreasonable burden on the agency," this language is only helpful when a duplicate item is sought. It provides no relief for multiple, different requests. We understand, though, that a balance must be struck between the ability of inmates to procure information relevant to their own cases and the ability of inmates to submit excessive and obviously frivolous requests. Senate Bill 411 strikes such a balance by ensuring inmates continue to have access to records related directly to themselves, provided there are no safety or security concerns in doing so. The language also appropriately recognizes existing policies and procedures for inmates to obtain this information.

**Time Response Logs**

The current requirements of the Right to Know Law stipulate that call logs are open records. Senate Bill 411 would not change that requirement, but instead would clarify what constitutes a time response log. The public's primary interest is in determining whether we are adequately and promptly providing 911 service, which is satisfied by the detail in the call log definition provided in the bill.

At the same time, by continuing to exempt the home address of the individual who accesses emergency dispatch, Senate Bill 411 would provide a measure of privacy and protection to witnesses and those who report crimes, who might be less inclined to do so if they knew personal information would be disclosed.

**Exemption for Home Addresses of Employees**
This legislation would extend the exemption currently existing under the Right-to-Know Law for the home addresses of law enforcement officers and judges to all home addresses. CCAP supports this provision of Senate Bill 411.

**Conclusion**
Counties manage huge volumes of information, not only about county governance but also records covering all manner of corporate, civil, and judicial interactions. We believe we have a duty to be open and transparent to the public, but at the same time we have a duty to assure that the privacy rights of individuals are respected and protected. We are pleased that Senate Bill 411 is moving forward to address the impacts of the Right-to-Know Law, now that we have enough experience with its requirements and idiosyncrasies but early enough in its history that we can deal meaningfully with elements needing change. We look forward to working with you on these and other recommendations affecting our records responsibilities. I would be happy to discuss these comments further and answer any questions you may have at your convenience.