

TESTIMONY

Issue	Points	Facts
<p><u>\$100,000 taken</u></p>	<p>Realize not budget hearing</p> <p>Sound like broken record – help us you are our only hope</p> <p>Affects logistical and substantive aspects</p> <p>NUMBERS 8000+ FDs issued Records Highs the last 2 months On pace for 2400 – still no peak Work growing faster than adding staff Full work load for AO we are hiring</p>	<p>Attempts to hire blocked Resolved late in fiscal year Resolved by bring in lawmakers OA made well aware of background Still took money</p> <p>This year given additional \$300K Just now being allowed to hire Concerned more money will be taken</p>
<p><u>State Related Institutions</u></p>	<p>OOR View – Public money = Public accountability</p> <p>Two Avenues – equal importance Philosophical – gets discussion Should it be a \$ amount Should it be % amount SB444 brings campus police in Impact on others getting tax \$? Apply to libraries hospitals etc.?</p> <p>Logistical – the avenue less traveled 100's - 1000's of new appeals if all in</p> <p>Even simple appeals require processing</p> <p>SB444 brings campus police in now – will lead to more appeals just because some will think now all is in</p> <p>DONOR INFO ALREADY EXEMPT</p>	<p>SB444 as written will give jurisdiction to DA not OOR when requesting criminal investigative records from a Campus PD.</p> <p>Headline State-relateds now subject to RTKL – will lead to surge</p> <p>Inquiries will be for: Sandusky information Historical mysteries, events, scandals Parents – student records, discipline Foundations</p> <p>Even the appeal involving clearly exempt records require processing – processing requires staff and staff requires funding</p> <p>If state relateds are added with no additional funding the OOR will go from overwhelmed to non functioning</p>

<p><u>Inmates</u></p>	<p>While the OOR supports limiting inmate use of RTKL, it is concerned about precluding anyone from using the RTKL.</p> <p>SB444 gives OOR jurisdiction over certain personal records of inmates – creating the potential for more appeals.</p>	<p>Numbers: Approx 30% of appeals are inmates Many of the records could be obtained outside the RTKL process</p> <p>Types of records requested:</p> <ul style="list-style-type: none"> - Sentencing Orders – the most - Lab reports - DNA tests - Why request for transfer denied - Police incident reports - Menus - Food ingredients - Clothing materials - Cable, medical, service contracts - Disciplinary files
<p><u>Enforcement</u></p>	<p>Biggest complaint from critics of law</p> <p>OOR already seeking enforcement unclear how courts will rule</p> <p>Court has enforced OOR in camera orders</p> <p>OOR recommends Discretion allowing OOR to seek enforcement Discretion to make bad faith determination</p>	<p>OOR cannot issue fines or penalties OOR uninvolved in bad faith determination</p> <p>Concern – taxpayer funds whole process – even attorney fees of attorney litigating against taxpayer and then pays fines if agency doesn't comply</p> <p>Should there be certain factors that create a presumption of bad faith?</p>
<p><u>3rd Party Notice</u></p>	<p>Initially sounds like a great idea – if system works right AORO knows and can avoid unnecessary release</p> <p>Today's electronic society sees privacy decreasing</p> <p>Other States and FOIA no notice Public information about you vs. your private info Just because it is about you does not mean it is not public</p> <p>Huge cost to notify – 800,000 people</p>	<p>Fact Scenario R asks for info about you – should you be notified</p> <p>Real life: Court documents on webpage contain personal medical info – notice every time accessed?</p> <p>Voter records have home addresses – notice every time accessed?</p> <p>PennWatch – notice every time salary is accessed?</p>

<p><u>Commercial use</u></p>	<p>Florida sells info – no notice</p> <p>Current law cannot ask purpose Signed certification form not a good idea</p> <p>OOR Solution: Declare that certain types of records are commercial by nature Then no need to ask purpose Allow OOR to oversee any fee disputes OOR would also determine if commercial record if dispute should arise</p>	<p>Certain records are by their nature commercial</p> <p>Higher fee would restrict commercial abuse while protecting citizen access</p> <p>FOIA – defines commercial requester pretty broadly would get abused here in PA</p> <p>Commercial Requester – Any person making a FOIA request that requests information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.</p>
<p><u>FOIA info</u> <u>Just for reference</u></p>	<p>Under the FOIA, solely for fee purposes, an agency is required to determine the projected use of the records sought by the FOIA request and the type of requester asking for the documents. As the FOIA was intended to promote the public's access to information, news media organizations and educational institutions are excused from certain fees.</p> <p>Fee categories for FOIA are:</p> <p>1) <u>Commercial</u> - Companies that or people who seek information for a use or purpose that furthers commercial, trade, or profit interests, including for use in litigation. Commercial requesters are required to pay for search, review and duplication costs.</p> <p>2) <u>Educational Institution</u> - Preschools, public or private elementary or secondary schools, and institutions of graduate higher education, undergraduate higher education, professional education, or vocational education that operate a program(s) of scholarly research. Educational</p>	<p>3) <u>Non-Commercial Scientific Institution</u> - Non-commercially operated institutions that conduct scientific research not intended to promote any particular product or industry. Non-commercial requesters are required to pay duplication costs, but are entitled to the first 100 pages without charge.</p> <p>4) <u>Representative of the News Media</u> - People who actively gather news for entities organized and operated to publish or broadcast news to the public. News Media requesters are required to pay for duplication, but are entitled to the first 100 pages without charge.</p> <p>5) <u>Other Requesters</u> - Requesters who do not fit into any of the above categories. These requesters are persons who are not commercial, news media, scientific or educational requesters and are required to pay search costs for more than 2</p>

	requesters are required to pay duplication costs, but are entitled to the first 100 pages without charge.	hours and duplication costs for more than 100 pages.
<u>(b)(16) criminal Investigative records jurisdiction</u>	<p>OOR should have jurisdiction over local law enforcement criminal records</p> <p>Current system and SB444</p> <ul style="list-style-type: none"> - Bifurcated - At times comingled - Causes confusion and leads to forfeiture of appeal rights 	<p>Fact Scenario</p> <p>1. R ask for records from PD – denied as criminal investigative must appeal to DA not OOR</p> <p>2. R ask for records from PD – denied as criminal and noncriminal investigative must appeal to DA and OOR</p> <p>Some DAs do not have AOs or know duties or timeframes</p>
<u>Independence</u>	<p>OOR must have it</p> <p>Needs HR and IT support from bigger agency to defray cost – like SBA</p>	Every time new administration or even new people within administration learn of OOR they want to control the hires
<u>RTKL Request</u>	<p>What is it</p> <p>When does time start</p>	
<u>Unduly Burdensome</u>	<p>SB 444 permits an agency to seek a protective order from a court when faced with an unreasonably burdensome request or group of requests.</p> <ul style="list-style-type: none"> - Undermines whole process - Greater time for access - Greater cost to agencies, courts and parties <p>OOR recommends:</p> <p>OOR determines what is unduly burdensome and who is disruptive, not court</p> <p>OOR as expert in better position to know process</p>	<p>Real Life Scenario:</p> <p>Citizen requests records from an agency that is resisting the release of records and using legal semantics. Compliant resistant agencies will skip the OOR and ask a court for an order. The request is held up in court for weeks to months.</p> <p>Results</p> <p>Bypassing the RTKL appeal process</p> <p>More activity for already busy courts</p> <p>More legal costs for parties</p>