

Testimony regarding the Right to Know Law

Presented to the Senate State Government Committee

October 21, 2013

Good Morning Chairman Smucker, Chairman Smith and members of the committee. The Department expends considerable time and resources in responding to requests made by inmates pursuant to the Right to Know Law ("RTKL"). The RTKL process is a much more burdensome and inefficient means of processing inmate requests than the alternative processes already in place within our Department.

In the last five years the number of total RTKL requests received by the Department has significantly increased. Moreover, the percentage of those requests that are from inmates has also dramatically increased. In addition, the overwhelming majority of the appeals to the Office of Open Records ("OOR") that the Department receives are from inmates.

RTKL Requests Received by the PA DOC

| Year | Total Requests | Inmate Requests | Percentage Inmate Requests from Total |
|--------------|-----------------------|------------------------|--|
| 2009 | 970 | 547 | 56% |
| 2010 | 1107 | 760 | 69% |
| 2011 | 1249 | 847 | 68% |
| 2012 | 1925 | 1527 | 79% |
| 2013* | 647 | 510 | 79% |

*(through 4-22-13)

RTKL Appeals Received by the PA DOC

| Year | Total Appeals | Inmate Appeals | Percentage Inmate Appeals from Total |
|--------------|---------------|----------------|--|
| 2009 | 55 | 50 | 91% |
| 2010 | 100 | 100 | 100% |
| 2011 | 133 | 128 | 96% |
| 2012 | 380 | 378 | 99.5% |
| 2013* | 397 | 393 | 99% |

*(through 10-18-13)

The time and resources that the Department expends to process inmate RTKL requests and appeals is significant. Between the time and resources spent by staff in copying and compiling records, drafting and sending RTKL responses and defending RTKL appeals, the Department easily spends more than \$75,000 per year to process **inmate** RTKL requests. More importantly, inmates already have ample more effective and less costly means to raise concerns regarding their conditions of confinement and sentencing and to seek access to records outside of the RTKL.

Alternative Means of Requesting Information

DOC policy permits inmates to submit request slips to staff members for any purpose. This would include, request for general information, seeking access to records or requesting a meeting with staff to discuss a concern. The DOC Inmate Handbook which is given to every inmate in our population provides the following information regarding the request slip process.

Request Slips:

A DC-135A, Inmate's Request to Staff Member is used to ask for information, interviews, or other things from staff members. This form is available on the housing unit. You must use a request slip to arrange a time to speak with staff concerning specific issues. The form has space for you to state the nature of your request. Be sure to write clearly and fill in all the sections at the top of the request slip. Any use of UCC references along with your signature could result in

your correspondence or request slips being returned. In most cases, staff will respond to your request slip within five working days.

The Request to Staff is a diverse tool that can be used to address virtually any concern that an inmate may have. There are no technical hurdles or strictures and staff provides quick and personal responses. In contrast, under the RTKL, requesters are permitted only to seek access to public records. Many inmate RTKL requests are denied because they seek answers to questions and do not seek access to any records. Requests to staff members and the responses received are officially documented and maintained in the inmate's file. Accordingly, utilization of the request slip system provides a quicker, more responsive and more cost effective response to inmate inquiries than recourse to the RTKL.

In addition, the Department Policy DC-ADM 003 ("Release of Information") affords the inmates an additional alternative procedure by which to request access to records. The DC-ADM 003 is available on the Department's public website at www.cor.state.pa.us. This policy predates the 2008 amendments to the RTKL and it provides more meaningful access to records for inmates because it allows inmates to obtain not only public records, but also private and personal records pertaining to themselves or their incarceration. For example, medical records, disciplinary records, educational and programming certificates, housing reports and work records are not public records and are not provided under the RTKL, however, they are available to inmates through the DC-ADM 003 process. Many, if not the majority, of the records inmates request pursuant to the RTKL are actually exempt from release pursuant to the statute and the inmates are better served by making requests under the DC-ADM 003.

Finally, because the DC-ADM 003 is an internal Department process, staff may respond simply and directly to inmates and do not need to be burdened by providing a formal response under the strictures of the RTKL, which will then be subject to immediate administrative appeal and review to the OOR. Once an inmate files an appeal, the Department must review the case, develop an evidentiary record and submit its case for decision to the OOR.

Amendment to RTKL

The Department proposes amending the RTKL to provide that inquiries submitted by inmates which are readily serviceable by the Department's internal processes be excluded as acceptable RTKL requests.

The Department provides inmates with more efficient and less costly means by which to raise their concerns and seek records and information outside of the RTKL, i.e., requests to staff, the DC-ADM 003. From the perspective of an inmate who seeks to obtain personal records, it is more advantageous to request these documents through the internal Department processes than through the RTKL.