



***Senate State Government Committee***

***The Honorable David Argall, Chair***

***June 23, 2022***

**Written Testimony of Liz Wagenseller**

**Executive Director, Office of Open Records**

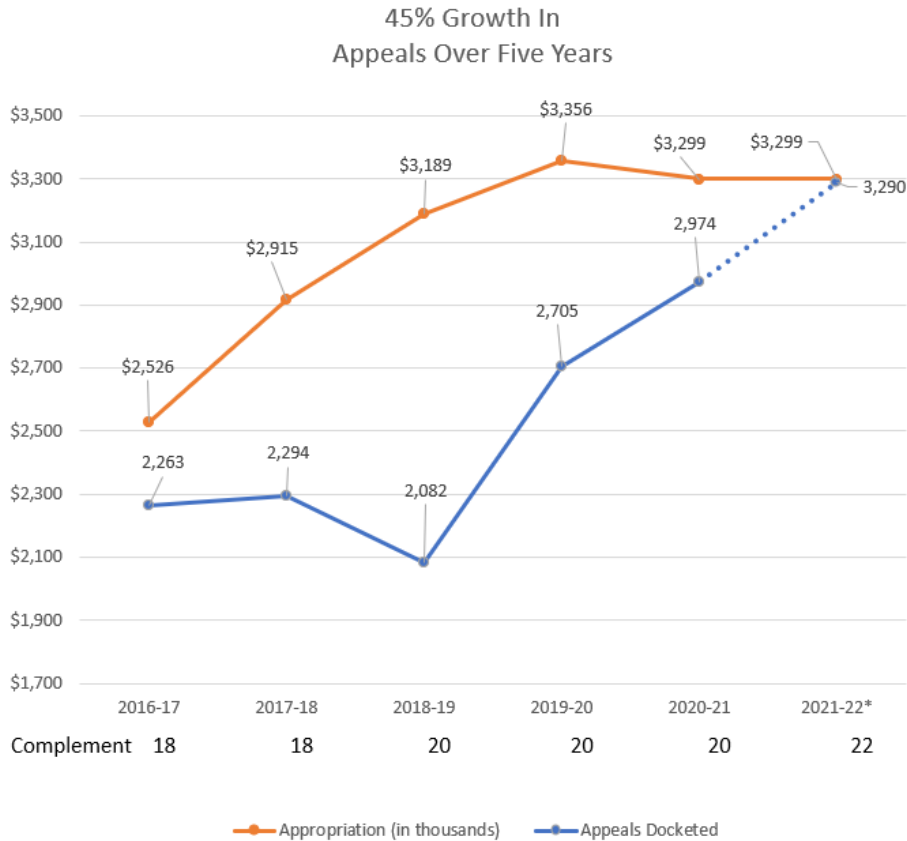
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Thank you for inviting the Office of Open Records (OOR) to testify today. Pennsylvania's Right-to-Know Law (RTKL) is a crucial transparency tool, allowing its citizens to hold Pennsylvania state and local governments accountable. Both HB2524 and SB492 propose significant changes in how citizens may access public records. My testimony will serve to compare reforms proposed in the two bills and outline the impact on the OOR.

### **Record-Breaking Number of RTKL Appeals**

The COVID-19 pandemic put the decisions of state and local government in the forefront like never before, resulting in an increased appetite for information on how policies and decisions were made. The heightened demand for public records shows no sign of abating. Citizens are keeping a closer eye on how all levels of government are acting and are often unwilling to accept an agency's public remarks as the final answer. Based on the record-breaking number of appeals our office decided, the RTKL appears to now have a permanent place in the toolbox for active citizens.

The most imminent challenge is the OOR's capacity and ability to meet its statutory duties while confronting a 45 percent increase in appeals. Faced with flat funding after a cut in 2020, we restructured the office and reduced operational costs by 20 percent. Even with those changes, an overload of the OOR appeal process is of utmost concern. Without funding to hire additional Appeals Officers, the OOR will soon reach a breaking point where it will be logistically impossible to issue timely decisions. This will re-direct the public to the courts to attempt to obtain records, a more costly, lengthy, and daunting avenue. All of these challenges exist without passage of either proposed bill.



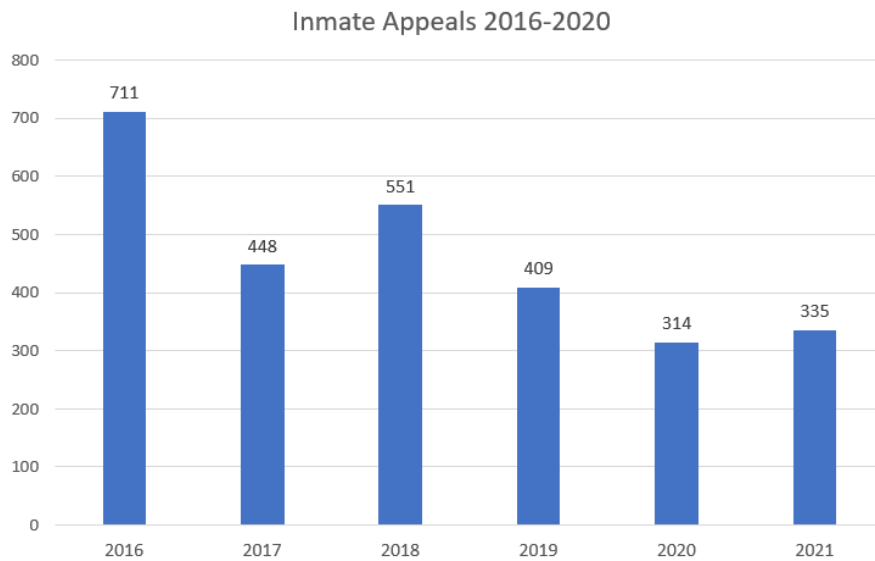
The Governor’s modest, proposed increase of \$368,000 will provide immediate assistance and fund two additional Appeals Officers. This would allow the office to keep up with the current caseload as well as the increasing demand by agencies and the public for its services.

**HB2524 and SB492**

The OOR applauds any efforts to provide and promote accountability by expanding public access to government records. However, with the office facing serious resource challenges, the OOR approaches both HB2524 and SB492 with apprehension solely due to the logistical impact on its ability to perform its statutory obligations. Though the exact impact of the reforms at hand is impossible to pinpoint, any change that leads to even a small but sustained increase in appeals is of serious concern; any that lead to a sizeable increase could be catastrophic.

***Both bills limit records that inmates must be provided.***

In 2021, 11 percent of appeals came from inmates, a share that has precipitously declined in recent years. At least initially, this reform will foreseeably increase appeals to the OOR, until knowledge of the extent of these new limitations becomes known to inmates and agencies resolve any initial procedural confusion.



***Both create commercial fees for RTKL request.***

Following the lead of other states, this provision allows government agencies to charge labor fees for providing the searching, retrieving, reviewing, redacting, or duplicating of records for commercial requesters. The most notable difference is that HB2524 carves out several exemptions from commercial fees, including for educational/research entities, news media, attorneys, insurance entities, and real estate entities.

This reform will inevitably lead to an increase in the number and complexity of appeals facing the OOR, as requesters deemed “commercial” will dispute charges.

***Both allow increased access to criminal and noncriminal investigative records.***

Currently, investigative records are exempt in perpetuity. Both bills allow access to criminal and noncriminal records after 50 and 25 years, respectively, unless an agency proves the release of such records would provide “actual harm to ongoing investigation.”

It is anticipated that any impact on the OOR would be de minimis.

***Only HB2524 creates a vexatious requester procedure.***

This process would allow a local agency to request that the OOR deem a requester “vexatious” by proving that they are utilizing RTKL requests to harass an agency. The OOR would hear evidence from both the agency and the requester; if the OOR deems the requester to be vexatious, the individual may be prohibited from making additional requests to that agency for up to a year. The OOR must render its decision within 90 days, with no opportunities for extensions.

This reform would have the biggest potential impact on the OOR. It requires the creation of an entirely new quasi-judicial process which would necessitate additional collection of evidence and arguments from the parties. At this time, the OOR would likely be unable to decide any more than two complaints per month. Anything beyond that will require at least two additional full-time staff.

Below are some additional notable proposals in the bills. The OOR does not foresee any significant increase in its appeals related to these proposed changes:

***Other notes on HB2524***

- Volunteer companies providing emergency services are not subject to the RTKL.
- Applications for individuals seeking to fill vacant legislative or gubernatorial appointments are not subject to the RTKL.
- Allow contractors and subcontractors to be considered “internal” when exempting internal, pre-decisional communications from the RTKL.

***Other notes on SB492***

- Campus police departments at State System or State Related universities are subject to the RTKL.
- When fulfilling a request that may include personal information protected under the constitutional right to privacy, an agency may require the requester to prove why information is not protected or why public interest outweighs individual privacy rights.

**Conclusion**

Recognizing the importance of the RTKL, both chambers of the General Assembly propose improvements in the two pieces of legislation. Supported by a properly funded OOR, those changes that increase the public’s access to records will strengthen transparency and accountability across the Commonwealth.