

Pennsylvania State Association of Boroughs



Testimony on

Right-to-Know Law

Senate State Government Committee

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Good morning, Chairman Argall, Chairman Street, and members of the Senate State Government Committee. My name is Ron Grutza and I'm the Senior Director of Regulatory Affairs for the Pennsylvania State Association of Boroughs. I'm happy to be with you this morning to discuss the much-needed changes to Pennsylvania's Right-to-Know Law.

The Pennsylvania State Association of Boroughs (PSAB) is a nonprofit, nonpartisan local government association representing the interests of 956 boroughs and the more than 10,000 elected and appointed borough officials. For over 100 years, PSAB has helped to shape the laws that govern boroughs and municipal officials across the state. Our membership is actively engaged in working with the General Assembly on a host of important issues, among which is what brings us here today, Pennsylvania's Right-to-Know Law.

We can all agree that the public has a right to information on how their government operates and spends public – or more specifically, taxpayer dollars. After all, information is the backbone of our democracy. If people do not know what is going on in their communities, they are ill-prepared and less likely to participate in their government. To foster this participation and prompt accountability, Pennsylvania reenacted and expanded our Right-to-Know Law by passing Act 3 of 2008; PSAB agreed with many provisions in Act 3, such as expanded transparency in government.

Enacting such sweeping changes in Pennsylvania's Right-to-Know Law, however, created several unintended consequences. Our borough officials experienced many more hours of administrative burdens due to the new law. Borough officials have encountered requests which are voluminous in nature and take extensive staff time for researching information, retrieving records, and copying documents. In some cases, the administrative costs associated with Right-to-Know Law requests have been staggering. One case regarding true costs for information requested resulted in a \$546 total cost to the borough administration while the requestor only paid \$28 for the documentation. Another extreme example was a total processing cost of \$103 which was acquired by the requestor for \$1! It is unfortunate that after excessive time and attention is spent on processing requests, several of our members report that requestors decide to not follow through, due to cost or other reasons.

Generally, many of our borough secretaries and staff members, who act as an Agency Open Records Officer, serve part-time in an office of one or two employees. Moreover, to keep taxpayer costs down, some borough offices are only open on select days and hours of the week. Sadly, frivolous, or commercial Right-to-Know Law requests often take away from staff core functions like answering resident inquiries, preparing spending plans, overseeing day-to-day operations of departments, and facilitating economic development projects, among other responsibilities.

Our members have identified two major areas of concerns which they seek legislative relief. First, requests from commercial entities who use the Right-to-Know Law to resell or solicit their business at the taxpayers' expense, and second, citizens who weaponize the Right-to-Know Law in an effort to punish borough officials.

Commercial Requests

Boroughs across the state have been confronted with requests made by various commercial interests seeking to “data mine” potential customer base at the taxpayers’ expense. Several members have been inundated by out-of-state requests for records as well. Ranging from requests for building permits to tax collector statements, the surge of requests by commercial entities since the enactment of Act 3 certainly justifies allowing for reasonable commercial request fees. Doing so will help alleviate some of the administrative costs that are currently borne, in large part, by the local taxpayers.

Similar to our local government association partners, PSAB is supporting Senator Brooks’ **Senate Bill 312** which would allow for reasonable commercial request fees. We wish to thank this committee for its support of this bill last year. Our members strongly endorse this version of the commercial request fee and encourage the committee to use this version in any Right-to-Know Law amendments.

Vexatious Requests

Unfortunately, not everyone who makes a Right-to-Know request has a valid, legitimate motive in making the request. Under the current law, we are prohibited from asking why the documents are being requested. Some unfortunate horror stories have come to our attention of Right-to-Know requesters who very cleverly use the law to punish local officials. The requests could be a disgruntled citizen, a former employee, or a former public official who wish to harass the local government, and in the case of many smaller boroughs, shut down the day-to-day functions. These so-called vexatious requesters file so many complex requests which forces a municipality to divert administrative resources to fulfilling these requests.

Unless a Right-to-Know Officer has technical expertise with providing "metadata" from all e-mails received, browser history from all computers, license information for your agency's PDF program, you will not realize that such requests can take 20-30 hours per week for municipal employees to fulfill the multiple requests or answering appeals to the Office of Open Records when something doesn't exist or does not meet the expectations of a vexatious requester. Also, there may be the additional expenses of the municipal solicitor needed, should an appeal be filed.

For these reasons, PSAB fully supports **Senate Bill 552**, sponsored by Senator Dush, which provides a practical remedy for the ever-growing problem of vexatious requesters. This bill, which passed the Senate last year, strikes the right balance between ensuring transparency and providing an avenue to gain relief from harassing requesters. We strongly urge you to use the language in Senate Bill 552 in any Right-to-Know Law amendments.

Senate Bill 492

PSAB supports many of the changes in **Senate Bill 492**, however, since the legislation does not include any relief for vexatious requesters or our preferred commercial request language, we would encourage the committee to incorporate the language from Senate Bill 552 and Senate Bill 312 into Senate Bill 492.

Our membership recently passed a policy resolution to support fire and emergency services *without reducing transparency*. Senate Bill 492 provides an exemption for several volunteer emergency services organizations from the Right-to-Know Law. It does provide a clarification that records in possession of these organizations that relate to the provisions of governmental

services are still an open record. We oppose the reduced transparency that such a carveout would create. However, we would support language that would apply to all records relating to how public funds were expended.

House Bill 2524

Unfortunately, the House version of a Right-to-Know Law update misses the mark for local governments. House Bill 2524, sponsored by Representative Schmitt, provides many updates to the law, which are generally acceptable, but when it comes to our two main areas of concern the bill fails to adequately address the issues and could create additional problems.

While the bill attempts to address the issue of commercial requests, the language leaves significant gaps which would allow a wide array of commercial requesters to be exempt from the very provisions intended to preserve taxpayer resources. Most problematic, the bill adds two broad and vague exceptions that would create substantial loopholes rendering the commercial requester provisions virtually useless.

House Bill 2524 attempts to address the ever-growing problems with vexatious requests, however, the language proves practically unworkable for our members. The bill requires an agency to prove the motives of the requester, while not being able to ask the requester the reason for the request. Additionally, the bill requires clear and convincing evidence that the requester's intent is to harass the agency. Further, the bill limits any unsuccessful petitioning agency from seeking vexatious relief for one year. The prohibition makes no sense especially when a small borough is dealing with someone who is already seeking to use the law to harass an agency.

One final point against House Bill 2524 is the award of court costs and attorney fees. We are very concerned that the bill would allow the Office of Open Records to award court costs and attorney fees to requesters as opposed to the current law which restricts the awarding of those fees to a court of law. We believe these costs should only be within the jurisdiction of the judiciary.

For these reasons, the members of the Pennsylvania State Association of Boroughs requests the members of this committee to reject House Bill 2524.

In closing, I would add that the access and sharing of public information is an essential core function of effective local government; however, this process should not come at the cost of and detriment to the daily operations of a community that provides public safety, infrastructure, and other critical services. Again, PSAB thanks this committee for already supporting **Senate Bill 552** and **Senate Bill 312** and ask your consideration of our positions as you deliberate further on Right-to-Know Law legislation. Thank you for the opportunity to share our positions on these bills.

****For the committee's reference, I have attached a limited list of comments offered by borough officials who have shared their perspectives on the impacts of the Right-to-Know Law.*

Right-to-Know Law Comments offered from Borough Officials

- 1) It seems like many of the comments center around small boroughs **not having resources or time to complete the tasks** at hand. I wonder if somehow concessions on time limits can be made dependent on the number of employees in the borough. In our Boro, we have one full time and one part time employee. When a large request comes in, it can literally shut down an office like ours to get it compiled in time. Controlling requests from citizen is a trickier task than controlling business requests and gets into serious questions of citizen rights. It's a very subjective thing to say who is being genuine and who is being "annoying." We almost have to expect disgruntled citizens- they pretty much come with the job description (using the term loosely since we are largely volunteer around these parts).
- 2) There needs to be some provision to allow us to stop someone who has a **rift with the municipality** and is trying to get back at them by filing constant requests for records. Constant requests for information just to cause a disruption in the municipalities business can shut down small municipalities by making the municipality devote all its resources to satisfy requests. This has happened to our borough and several other small municipalities. I have spoken to legislators about this and to our solicitor and DA.
- 3) I have had one individual directly say to me that he knew I would **not be able to comply with his request** in the amount of time given (even with the 30 day extension), therefore making the Borough look like the "bad guy" unwilling to provide the information to him.
- 4) I believe that companies requiring the information for purely profitable purposes should be addressed. **Fence and pool companies** asking us to pull permitting records for their own purposes use borough employee time and therefore tax dollars to make a profit for themselves. Not to mention, it brings up privacy issues for residents. They may be on a do-not-call list, but end up getting unwanted sales calls because we had to hand out records that included their contact information.
- 5) I feel they should not allow **requests to be returned by fax**. We cannot charge for these requests ahead of time, because we don't know the actual cost. It is very difficult, if not impossible, to determine how much it cost to send a fax until a phone bill is received. Sending a large volume of papers by fax can be time-consuming. If the documents sent are double sided we have to make them one sided to fax. This allows requestors to not pay the per page fees. What incentive would people have to send the fee after they have already received the information?
- 6) I do not feel the Open Records Officer should have to have his/her signature notarized on a "**Non Existence of Record Form**". This is a huge inconvenience in a small borough. Our signature on borough letterhead paper should be enough.
- 7) I have had several very extensive requests filed by persons who were upset with the borough council. It seems like if someone doesn't get his way, he just **files an unreasonable request**, which I see as a legal way to harass the records officer. Last fall, a person who requested records filed a complaint against me, saying that I was "putting him off". When I received the letter from the state Office of Open Records, I called to find out what I should do. I was told that I would have to prove I did not violate the law. Basically, I was assumed guilty unless I proved otherwise. The person who filed the complaint didn't have to prove anything. I had very good documentation (lots of e-mails and notes) to show that I went above and beyond the law to provide the requested records. I had only 7 business days to get my documentation to the OOR. I had to work overtime, get the attorney involved, put my personal life aside, and focus on my defense. After I submitted my documentation to the OOR, the records requester finally came into the office to view the records, then called the OOR and withdrew the complaint. This is my 22nd year as borough secretary, and these types of complaints have brought me closer than ever to walking away from this job. I feel that if something doesn't change with this law, many municipalities will lose good employees and will have a difficult time replacing them.