



pennsylvania

OFFICE OF OPEN RECORDS

2023 ANNUAL REPORT

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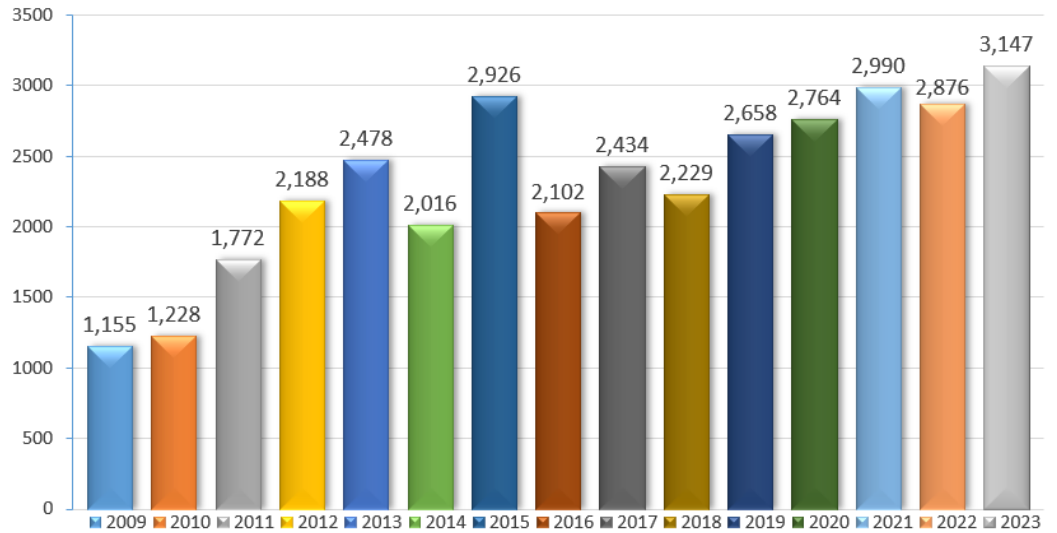
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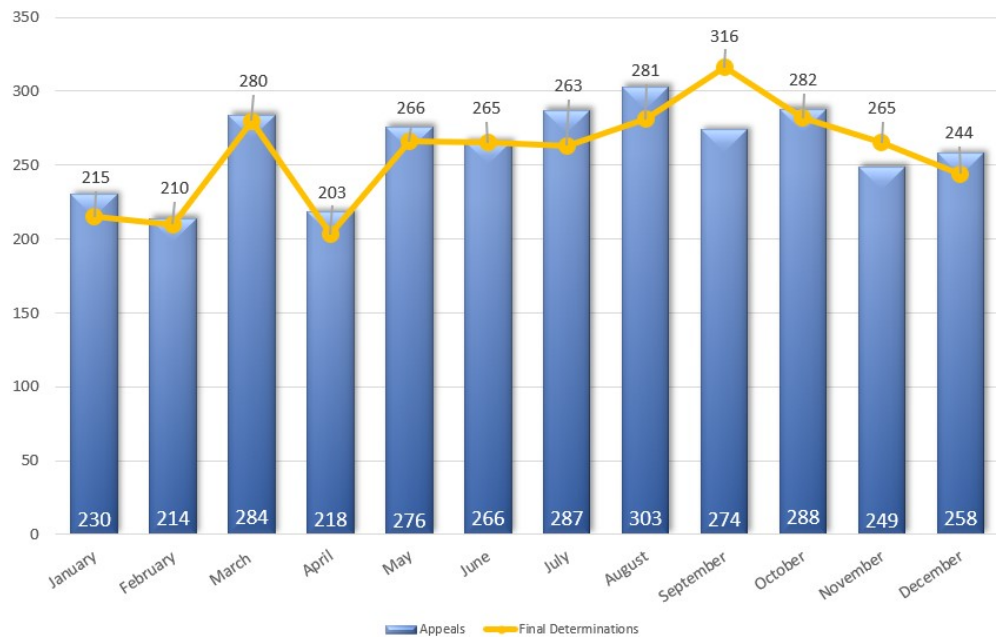
3,147 APPEALS FILED

2023 ranks as the busiest year ever for the Office of Open Records. The current three-year average is 3,004 appeals; the current five-year average is 2,887.



3,090 DECISIONS ISSUED

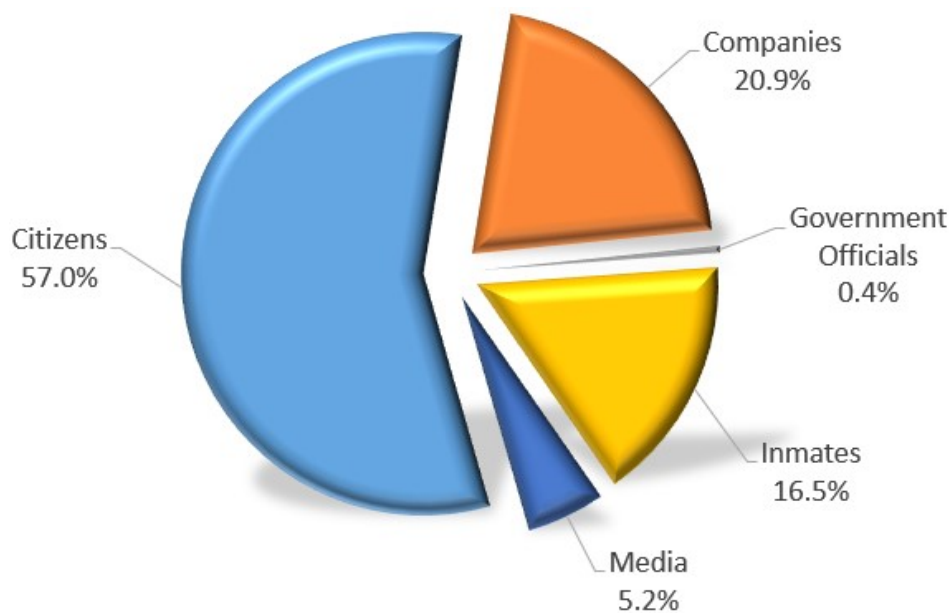
The issues to be decided on appeal continue to grow in both volume and complexity.



1,794 CITIZEN APPEALS

Over half of the appeals docketed by the OOR in 2023 were filed by everyday citizens. They were followed by:

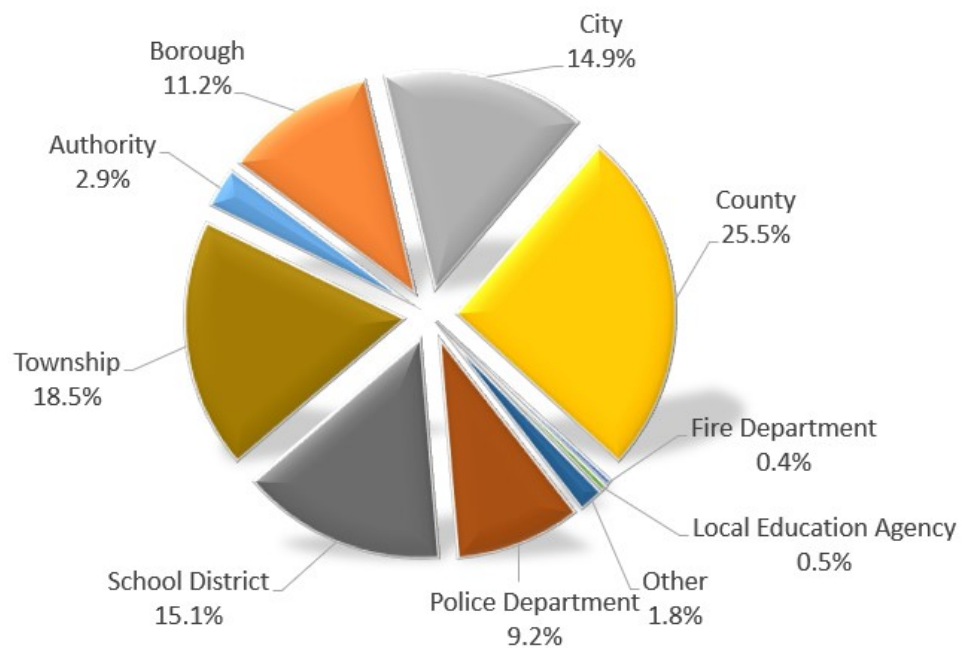
- Companies and Private Organizations, 657
- Inmates, 518
- Media, 164
- Government officials, 14



2,366 APPEALS INVOLVING LOCAL AGENCIES

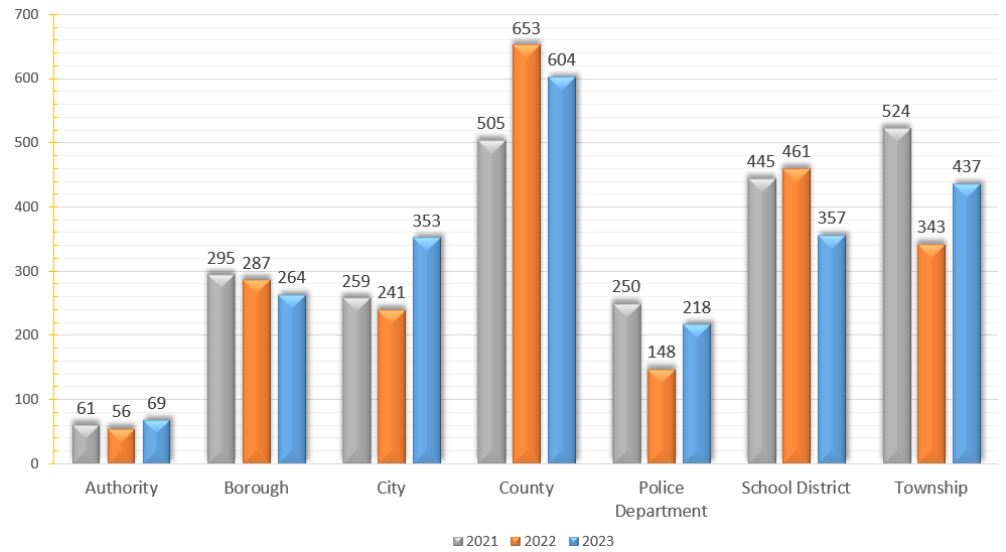
In 2023, municipalities (cities, boroughs, and townships) were involved in 45% of appeals filed against local agencies. Here's the complete list:

- Counties, 604
- Townships, 437
- School Districts, 357
- Cities, 353
- Boroughs, 264
- Police Departments, 218
- Authorities, 69
- Other, 43
- Local Education Agencies, 11
- Fire Departments, 10



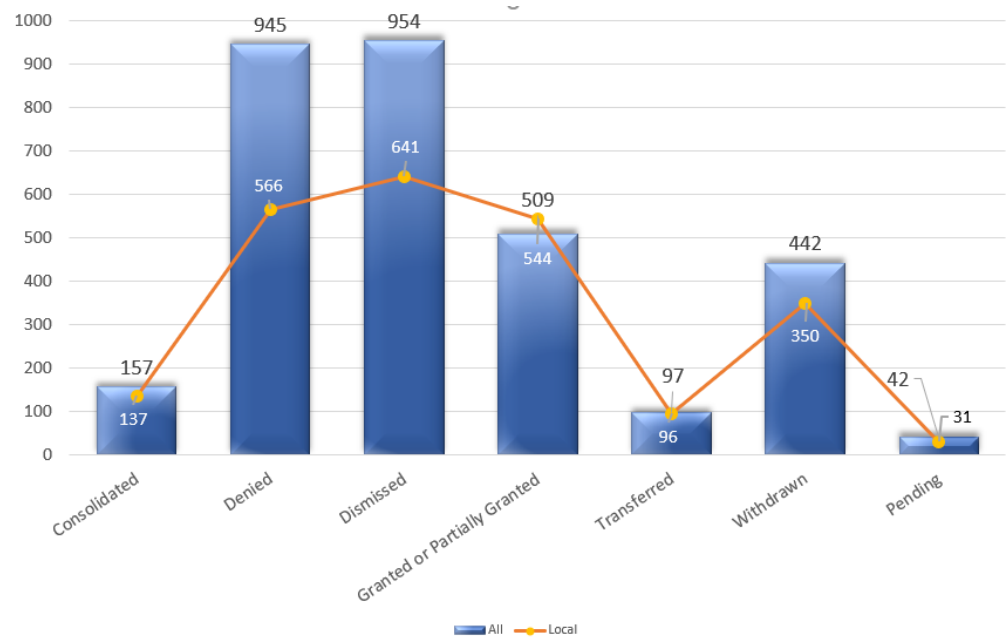
INCREASE AND DECREASE OF LOCAL AGENCY APPEALS

In 2023, a few agencies saw increases and decreases in the number of appeals filed compared to 2021 and 2022.



BREAKDOWN OF LOCAL AGENCIES

Requesters obtain access to records when appeals are granted or withdrawn (only the requester can withdraw an appeal). In 2023, 38% of appeals involving local agencies were granted, partially granted, or withdrawn while 24% were denied.



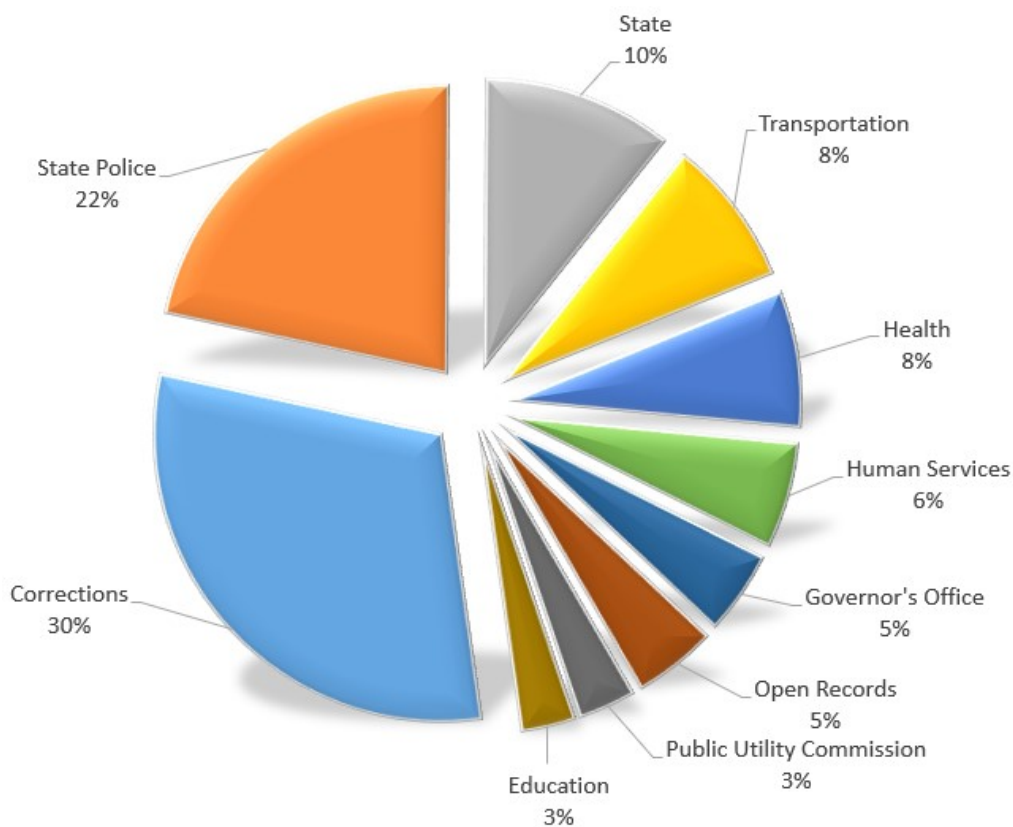
Appeals are commonly dismissed for being filed too early, too late or incomplete (appeals must include a copy of the request and agency response, if a response was issued). Appeals filed too early can be refiled. Appeals are transferred when the OOR is not the proper appeals officer (i.e. judicial offices or statewide row offices).

The total breakdown of all agencies (3,146) does not add up to the total of 3,147 listed earlier in the report. The “missing” 1 appeal was considered “Closed” following the passing of the requester.

670 APPEALS INVOLVING STATE AGENCIES

In 2023, the Department of Corrections was involved in more appeals than any other state agency. Here’s the full list:

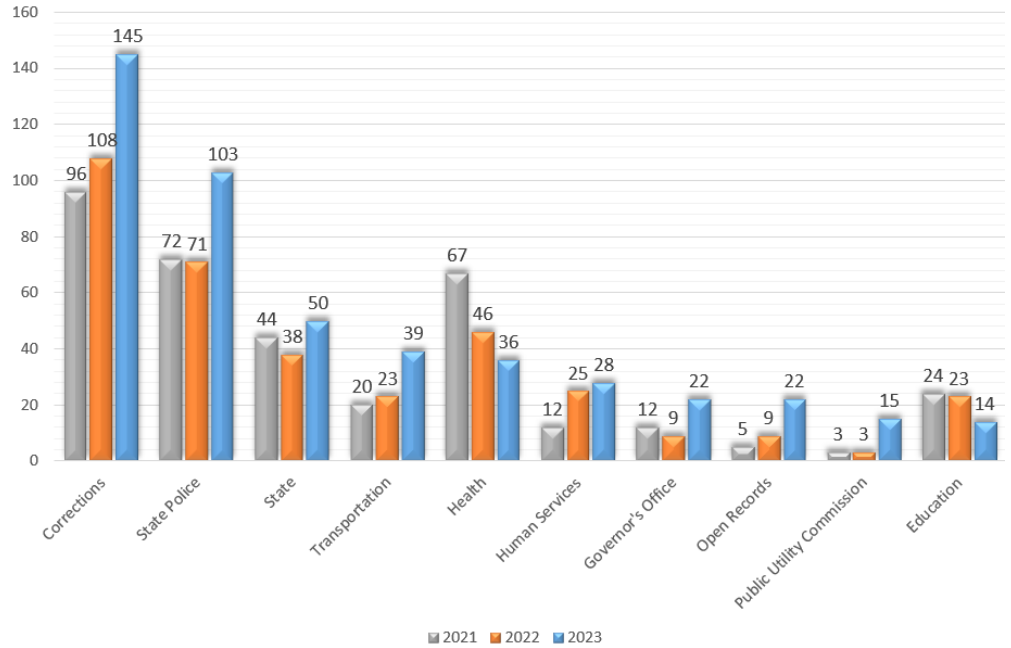
- Department of Corrections, 145
- State Police, 103
- Department of State, 50
- Department of Transportation, 39
- Department of Health, 36
- Department of Human Services, 28
- Office of the Governor, 22
- Office of Open Records, 22
- Public Utility Commission, 15
- Department of Education, 15
- Other, 195



The number of appeals involving local agencies on page 4 (2,366) and the number involving state agencies on this page (670 do not add up to the total of 3,147 appeals listed earlier in this report). The “missing” 111 appeals were filed against judicial agencies, legislative agencies (both of which the OOR has no jurisdiction over), and entities which are not agencies.

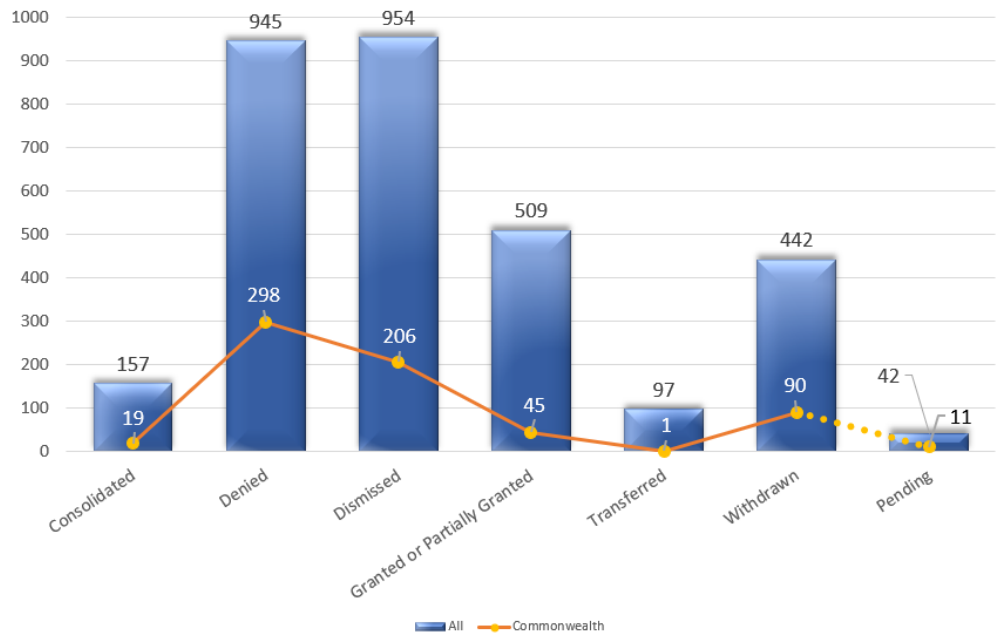
INCREASE AND DECREASE OF STATE AGENCY APPEALS

In 2023, several agencies saw noticeable increases and decreases in the number of appeals filed compared to 2021 and 2022.



BREAKDOWN OF STATE AGENCIES

Requesters obtain access to records when appeals are granted or withdrawn. In 2023, 20% of appeals involving state agencies were granted, partially granted, or withdrawn while 44% were denied.



ISSUES RAISED BY AGENCIES DURING RTKL APPEALS

Since 2018, the OOR has tracked the specific issues raised by agencies and addressed by Appeals Officers in their Final Determinations. This data gives some insight into the reasons most commonly raised by agencies for denying access to records.

Of the 30 exemptions specifically enumerated in Section 708(b) of the RTKL, these 10 were raised most often in 2023:

- Noncriminal Investigative Records, (b)(17), 166
- Criminal Investigative Records, (b)(16), 124
- Personal Identification Information, (b)(6), 91
- Internal, Predecisional Deliberations, (b)(10), 85
- Personal Security, (b)(1), 51
- Public Safety, (b)(2), 51
- Building, Infrastructure and Utility Safety, (b)(3), 25
- Individual Medical Records, (b)(5), 22
- Trade Secret / Confidential Proprietary Information, (b)(11), 19
- Personal Notes or Working Papers, (b)(12), 18

The OOR's Appeals Officers also heard hundreds of cases in which the agency asserted that the requested records weren't in the possession of the agency or were not records of the agency (487), the requested records did not exist (202), the request was not specific or asked questions rather than seeking records (169), the records are exempt under another State law (60), the request sought records protected by attorney-client privilege (25), or information was protected by the State constitution's right to privacy (23).

Note: Many appeals before the OOR involve multiple exemptions and/or other reasons for denying access to records.

10 EXAMPLES OF RECORDS THE RTKL PROVIDED ACCESS TO IN 2023

The goal of the RTKL is to make government records available to the public. These records can then be used to hold public officials accountable for their actions.

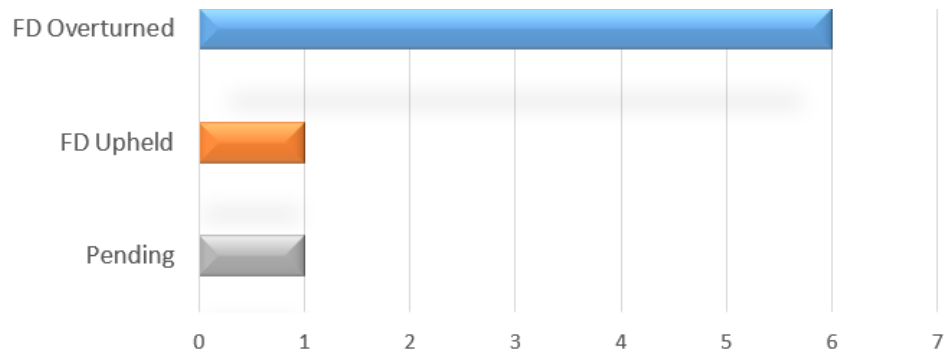
Here are some of the records accessed via the RTKL in 2023:

1. A school district paid an outside law firm more than one million dollars to defend against allegations of discrimination against LGBTQ students.
2. A county jail funded employee benefits, such as gun range memberships, through commissions made from charges associated with inmate phone calls.
3. Emails between municipal employees expressed reticence to accept federal funding due to stipulations to build affordable housing.
4. A list of serious injuries experienced by those riding rented electric scooters that were part of a new pilot program.
5. A sheriff's office used over \$500,000 for significant income increases for non-uniformed employees instead of the intended purpose of funding new uniformed staff.
6. A school district employee altered library circulation records after receiving a request for the records.
7. Dozens of deaths at Pennsylvania county jails were undercounted.
8. State officials repeatedly pressed a municipality to address the poor condition of a bridge that subsequently collapsed.
9. The General Assembly spent \$279,361 since 2017 to settle 11 legal disputes, seven of which included strict confidentiality clauses.
10. After changes to a police department's disability benefit, the number of police officers reporting being injured on duty fell by 46 percent.

59 PETITIONS FOR RECONSIDERATION

In 2023, 59 requests were made for the OOR to review final determinations for possible errors, known as a “petition for reconsideration.” This represents a decline from 74 in 2022. Of the 59 petitions for reconsideration, most (78 percent) were made by requesters, while less than a quarter (22 percent) were made by an agency.

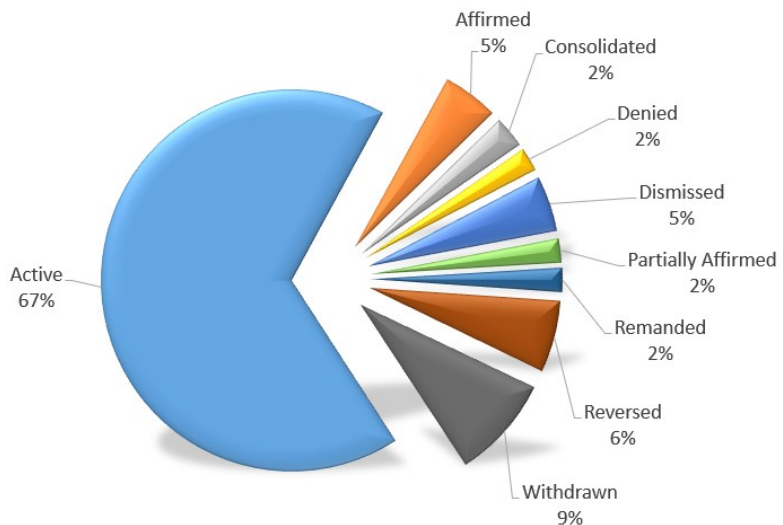
Just 14 percent of petitions for reconsideration were granted by the OOR, with three quarters of those FDs being overturned.



149 APPELLATE COURT FILINGS

Less than five percent of OOR appeals were appealed to an appellate court. The OOR continues to monitor the 67% of those appeals pending before the Court of Common Pleas, Commonwealth Court, and Supreme Court. A breakdown of the 33% that have already been decided is as follows:

- Affirmed, 7
- Consolidated, 4
- Denied, 3
- Dismissed, 7
- Partially Affirmed, 3
- Remanded, 3
- Reversed, 9
- Withdrawn, 13



2023

Accomplish- ments

Here are some of OOR's accomplishments in 2023:

1. Docketed 3,147 appeals and issued 3,090 decisions, the highest numbers in the Office's 15 years of existence.
2. Conducted 49 training sessions, including a bi-weekly virtual training session, reaching nearly 3,000 participants.
3. Fully launched E-File Appeal Portal Process for all RTKL appeals, an electronic filing system for online docketing to automate and streamline the appeal process.
4. Hosted an Annual Training in November for 224 participants, discussing topics such as recent court opinions, case law and best practices for filing sufficiently specific requests, and OOR E-File Appeal Portal practice tips for requesters and agencies.
5. Released the second inaugural [Agency Website Review report](#) after analyzing 96 agency websites for RTKL compliance and finding 73 percent in full compliance with the law.
6. Adjudicated 22 appeals from the OOR's own denials of RTKL request, the highest in 15 years of existence.
7. Created an annual internship program for undergraduate students interested in pursuing law degree.
8. Received an essential increase in funding, allowing the OOR to meet its statutory duties and the increasing demand for transparency within the Commonwealth.
9. Executive Director spoke and attended the 2023 Council on Governmental Ethics Laws (COGEL) conference with other governmental executives from around the US dealing with public record requests.

90 MEDIATIONS

In 2023, 49 mediations (54% of the total filed) were successfully resolved through the OOR’s mediation program. The program continues to be a fantastic way to efficiently resolve disputes under the RTKL. Several of the OOR’s Appeals Officers are trained mediators, and mediations can take place via telephone or in person. When a mediation ends successfully, the appeal is withdrawn. That saves both sides the work and expense that goes into a formal appeal — and it prevents the case from moving to court. Either side can choose to end mediation at any time; if this happens, the traditional RTKL appeal process begins. More about the OOR’s mediation program can be found at:

www.openrecords.pa.gov/Appeals/Mediation.cfm

49 TRAINING SESSIONS

The OOR is statutorily required to provide training sessions about the RTKL and the Sunshine Act. In 2023, 49 training sessions, mostly virtual, were attended by 2,764 public officials, lawmakers, judges, agency employees, solicitors, and requesters.

Our complete training schedule can be found at:

www.openrecords.pa.gov/RTKL/TrainingAbout.cfm

Image below courtesy of the Pennsylvania State Archives.



1,317 RIGHT-TO- KNOW REQUESTS

2023 ranks as the OOR's second busiest year for receiving RTKL requests.. As in previous years, however, the vast majority of the requests were misdirected. In other words, they did not seek records of the OOR; instead, they sought records of other agencies but were mistakenly filed with the OOR.

The vast majority (91 percent) of RTKL requests filed with the OOR last year were misdirected. 100 requests were for OOR records, usually copies of Final Determinations, case files, Agency Open Records Officer contact information, OOR Twitter messages, email exchanges, staff contact information, calendar entries, staff training manual, internet history, staff photographs, and OOR forms.

24 OOR EMPLOYEES

In 2023, the Office of Open Records docketed a record-breaking 3,147 appeals and issued 3,090 final determinations, touching on issues related to voting, school policy, medical marijuana, financial operations at correctional facilities, bidding processes, nautical collisions, lead testing, autopsy reports, disease outbreaks at a restaurant, and much more. This statistic more than any other shows that the citizens of Pennsylvania remain committed to keeping their local and Commonwealth governments accountable. The free flow of information between citizen and agency is the lifeblood of trust and accountability. However that trust and accountability cannot happen without proper access to government records. Navigating how the Right-to-Know Law determines access to these records is a complicated, nuanced task. Pennsylvania is fortunate to have a remarkable team of dedicated professionals who uphold the rights afforded under the law. Thank you to these public servants: Kyle Applegate, Nathan Byerly, Jordan Davis, Berk Demiral, Damian DeStefano, Dylan Devenyi, Angie Edris, Blake Eilers, Lyle Hartranft, Catherine Hecker, Faith Henry, Katie Higgins, Kelly Isenberg, Bandy Jarosz, Michele Kusery-Grant, Daneen Miller-Smith, Tope Quadri, Erika Similo, Janelle Sostar, George Spiess, Ian Spiess, Joshua Young, Magdalene Zeppos-Brown, and the 2023 summer interns, Vivian Ealy and Ethan Lown.

Liz Wagenseller
March 11, 2024