

Annual Report



pennsylvania

OFFICE OF OPEN RECORDS

2009



A message from Executive Director Terry Mutchler



The challenge of implementing the new Right-to-Know Law has been a welcomed mission because I believe that ensuring open and honest government is a bedrock principle of democracy. Good government can only be attained through the unfettered exchange of information between citizens and their government. A citizen's right-to-know fosters accountability, prevents abuses of power and promotes trust in government.

Governor Edward G. Rendell, an ardent supporter of open government, signed the Right-to-Know Law on February 14, 2008. He fundamentally changed access to public records. Citizens no longer have to prove that a record is public. Now, a government agency must *presume* the record is public. If the government chooses to withhold a record, it has the burden to prove, with legal citation, why access should be denied. The law also required the creation of the Office of Open Records and required that it issue an annual report on its progress, which we do in this debut report.

When I arrived to my new post, the Department of Commerce and Economic Development provided invaluable help in designing an office and creating a budget. From a cubicle, I divided my day into mission, message and mechanics. The mission was to ensure maximum access to government records, and I crisscrossed the Commonwealth to share that message. I also focused on the mechanics: revising blueprints, writing policy, interviewing applicants and answering the ever-present question: Will this law work?



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A message from the Executive Director, cont.

The answer is yes, because of those who helped make it work. I owe immeasurable gratitude to Gov. Rendell, Senate Majority Leader Dominic Pileggi, former DCED Executive Deputy Secretary John Blake and my OOR colleagues who undertook a nearly impossible mission and devoted themselves fully to the task. Senator Pileggi authored the law and has been an equal partner in ensuring open government. The Legislature passed and funded the bill and our office has served as a quasi-satellite office for lawmakers who often forward constituent questions about public records.

It is my great privilege to serve as the Commonwealth's first Executive Director of this independent office. This job changes daily and it seems similar to rafting an uncharted river – exhilarating and exhausting. The statistics are staggering. We handled nearly 1,200 appeals, 5,000 telephone and email inquiries and hundreds of trainings. In our second year, our numbers are growing, and our nine staff has a new workload: 130 cases pending in all levels of the judiciary.

In my six-year term, I pledge that the OOR will help citizens, officials and members of the media better understand their rights and obligations. Our goal is to apply this law fairly and evenly and change what I call the "culture of secrecy" that often permeates government. As you read our debut Annual Report, I welcome your comments and suggestions to improve access to government because I believe this government does not belong to me, or any other public official. Pennsylvania's government belongs to its citizens.

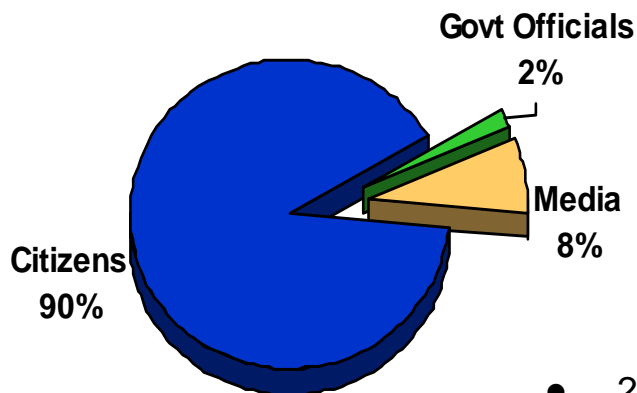


Pennsylvanians were eager to look through the Law's new window into the workings of government. Thousands of record requests were made to local and Commonwealth agencies and **1,159 appeals** were filed to the Office of Open Records,.

The issues raised in the actual appeals process – when a requester challenges the denial of a Right-to-Know request to the Office of Open Records – have run the gamut from the smallest procedural questions to Constitutional matters such as the right to privacy.

The Office of Open Records has tackled fundamental issues of what is a valid request, ruled on the fees and costs allowed, and developed evidentiary standards to ensure a fair process.

WHO ARE THE REQUESTERS?



- 1047 from Citizens
- 88 from the Media
- 24 from Government Officials



What Records Did People Ask For?

Requestors have sought a myriad of government records and their requests often mirror national issues and concerns. The economy and financial stresses seem to be on everyone's mind. As families sit at the kitchen table to better track their spending, they are filing Right-to-Know requests to track how government officials are spending their tax dollars as well. In addition to financial records, they ask for many other records. From our website, <https://openrecords.state.pa.us>, you can track every appeal filed and know what records were sought and denied and how the OOR ruled. Here are a few examples of what people wanted under the new law.

- Records that reflect what a local agency pays a law firm or attorney
- Salary of the superintendent of school districts
- Overtime paid to snow removal workers in local government
- W-2 Forms for state and local government workers
- A copy of a grant application for a wind turbine construction
- Prison visitor logs
- Emails for elected officials in school districts, townships, the Governor's Office and the Office of Open Records
- Police reports
- Environmental Studies/Engineering Studies
- Recordings of public meetings
- Certified payroll records
- Construction blueprints, building permits, zoning applications
- Home addresses of teachers, public officials and lawmakers



Status of appeals as of 12/31/2009

596 Final Determinations issued
246 Granted or partially granted
254 Dismissed
167 Withdrawn
142 Pending
350 Denied or dismissed as moot, usually because
the records were released

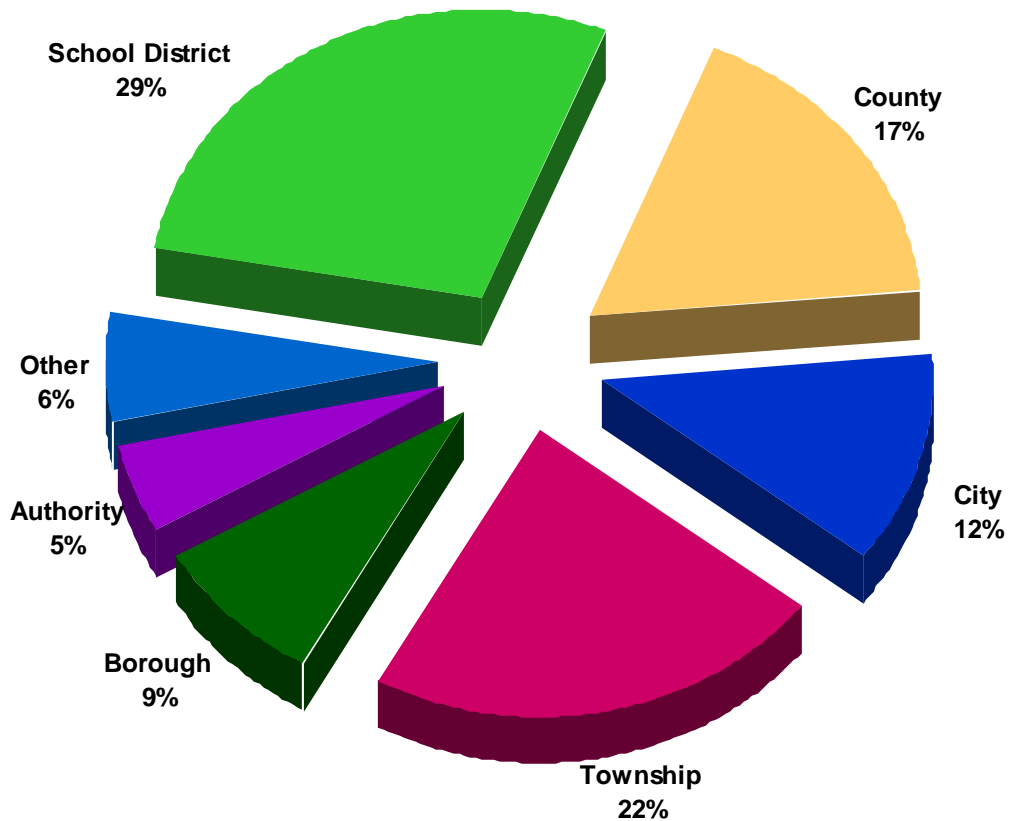
Breakdown of the appeals filed against Commonwealth and Local Agencies

344 against State Agencies:
46 Granted or partially granted
48 Withdrawn
49 Dismissed
177 Denied
24 Pending

815 against Local Agencies:
203 Granted or partially granted
119 Withdrawn
205 Dismissed
170 Denied
118 Pending



Types of Local Agencies Appeals Filed Against





Most appeals filed to the OOR:

Out-of-State requesters (total)	111
Mr. Simon Campbell	49
Signature Information Solutions	27
Ms Julie Serfass	27

Appeals Filed Against Commonwealth Agencies

Corrections	81
State Police	45
Transportation	27
Board of Probation & Parole	22
Labor & Industry	18
Environmental Protection	17
State	17
Public Welfare	11

All other Commonwealth agencies: less than 10 appeals each filed against them

Most Appeals Filed Against Local Agencies

*City of Philadelphia	46
*Allegheny County	17

* And all departments and agencies within



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Right-to-Know Requests

During its first year, the Office of Open Records received 25 requests for a variety of its own documents -- staff salaries, job descriptions, health benefit information and statements of financial interest; correspondence; judicial decisions; appeal files; the office's Web site policies and the list of registrants at an OOR state-wide training session. This Office ultimately granted every request for records.

Interestingly, but inaccurately, many people believe that the Office of Open Records is a repository for all public documents and information in the Commonwealth.

Several times a day the Office of Open Records receives requests for standard government records that are available elsewhere. We also received inquiries from people seeking information on where relatives are buried, how they can obtain their adoption records, how to obtain a license for arcade games, a list of the most profitable businesses in a particular county, the blueprints to their home, a high school diploma or the available information on antique farm equipment.



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Litigation

Perhaps the best measure of the success and independence of the Office of Open Records is that its determinations have equally pleased and disappointed government officials, reform and watchdog groups, the media, requesters and attorneys.

As with any new statute, the courts will ultimately interpret the Right-to-Know Law and that process is in full swing with many agencies and requesters filing petitions for review of the OOR's Final Determinations.

As of December 31, 2009, there have been 70 appeals from our Final Determinations involving local agencies to the Courts of Common Pleas around the state. An additional 40 appeals have been made to the Commonwealth Court in matters involving state agencies.

The legal issues raised in these appeals are wide ranging and significant – a clarification of the term “governmental function,” the standard of review of OOR determinations by the court, the standards for burden of proof, the format and medium records are provided and guidance on the parameters of the pre-decisional deliberative records exception.



110 Petitions for Review filed in 2009

70 Courts of Common Pleas – local agency appeals

- 84% filed by government (59 appeals from OOR Grants)
- 16% filed by requesters (11 appeals from OOR Denials)

40 Commonwealth Court – Commonwealth agency appeals

- 38% filed by government (15 appeals from Grants)
- 58% filed by requesters (23 appeals from Denials)
- 48% of these are inmates (12)
- 4% filed by both parties (2 cross appeals)

*Eliminating inmate appeals, the statistics would change as follows:

32 Petitions for Review filed in Commonwealth Court:

- 61% filed by the government (17)
- 22% filed by the requester (13)
- 6% cross filed (2)



The Right-to-Know Law requires the Office of Open Records to conduct one annual training session but Executive Director Terry Mutchler has made education about the RTKL one of the hallmarks of her term.

The OOR staff has crisscrossed the Commonwealth conducting **134 training sessions** and countless speeches for citizens, municipal officials, attorneys, legislators, and reporters of audiences ranging from 5 to 500.

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| Sept. 8, 2008 PA Municipal Authority Assn's annual conference, Hershey | Oct. 23, 2008, Lycoming County township officials, Pennsdale |
| Sept. 10, 2008 Lancaster Inter-Municipal Committee, Manor Twp. | Oct. 27, 2008, Western Bradford Co. COG, Troy |
| Sept. 19, 2008, Institute for Municipal Secretaries, Clerks and Administrators, Shippensburg | Oct. 29, 2008 Quaker Valley COG, Emsworth |
| Sept. 26, 2008, Altoona Mirror staff training | Oct. 30, 2008, Sen. Eichelberger community event, Three Springs |
| Sept. 26, 2008, Cambria Co. Twp. Supervisors Convention, Ebensburg | Nov. 3, 2008, Lancaster Co. Twp. Supervisors Convention, New Holland |
| Oct. 2, 2008, Cumberland County Twp. Supervisors Convention, Carlisle | Nov. 6, 2008, Eastern Bradford Co. COG, Towanda |
| Oct. 2, 2008 Carlisle Sentinel staff | Nov. 11, 2008, Chester County municipal officials, Thorndale |
| Oct. 2, 2008 Dauphin Co. Twp. Supervisors Convention, East Hanover Twp. | Nov. 12, 2008, Upper Dauphin COG, Halifax |
| Oct. 7, 2008, PHMC Annual Archives and Records Management Seminar, Harrisburg | Nov. 13, 2008, Sen. Eichelberger community event, Altoona |
| Oct. 16, 2008 Adams County officials, Gettysburg | Nov. 14, 2008, County Planning Directors, State College |
| Oct. 16, 2008, Berks County Twp. Supervisors Convention, Temple | Nov. 14, 2008, College Twp. staff, State College |
| Oct. 22, 2008, Harrisburg Area Community College administrators | Nov. 15, 2008 State Assn. of Twp. Commissioners, Lancaster |
| Oct. 22, 2008, Carbon, Lehigh, Monroe & Northampton borough officials, Stockertown | Nov. 18, 2008, City of Allentown employees training |
| | Nov. 18, 2008 Bradford County Boroughs Assoc., Towanda |



- Nov. 19, 2008 State College borough staff
- Nov. 20, 2008, Westmoreland County Boroughs Association, Greensburg
- Nov. 21, 2008, Whitemarsh Township staff and police dept., Lafayette Hill
- Nov. 24, 2008, Blair County municipal secretaries, Altoona
- Nov. 25, 2008, Lehigh County staff, Allentown
- Dec. 3, 2008, Lancaster County staff, Lancaster
- Dec. 4, 2008, Lackawanna County municipal officials, Clarks Summit
- Dec. 8, 2008 Erie County municipal officials, Erie
- Dec. 11, 2008, Butler County municipal officials, Valencia
- Dec. 12, 2008, York County staff, York
- Dec. 17, 2008 Dauphin County municipal officials, Middletown
- Dec. 18, 2008, State-wide training, Harrisburg
- Dec. 23, 2008, PSATS Webinar, Harrisburg
- Jan. 1, 2009, Patriot-News staff, Harrisburg
- Jan. 10, 2009, Sen. Folmer community event, Lebanon
- Jan. 13, 2009, Commonwealth Foundation Transparency Symposium, Harrisburg
- Jan. 14, 2009 Rep. Vulakovich event for municipal officials, Glenshaw
- Jan. 15, 2009 Assoc. of Municipal and School Solicitors, Pittsburgh 45
- Jan. 15, 2009 Rep. Mahoney RTKL event, Uniontown
- Jan. 20, 2009 Columbia/Montour Borough Assoc., Lightstreet
- Jan. 22, 2009 Rep. Gingrich breakfast for municipal officials, Palmyra
- Jan. 23, 2009 Rep. Gillespie's staff, Harrisburg
- Feb. 13, 2009, Monroeville Police Department
- Feb. 18, 2009, Municipal officials, Abington
- Feb. 18, 2009, Municipal officials, Bensalem
- Feb. 19, 2009 Rep Pyle and Oberlander, Senator White event, Kittaning
- Feb. 19, 2009 Juniata-Mifflin Co. Boroughs Assoc., Lewistown
- Feb. 19, 2009 Municipal officials, Ford City
- Feb. 20, 2009 Rep. Ellis RTKL event, Butler
- Feb. 20, 2009 Rep. Oberlander RTKL event, Strattanville,
- Feb. 24, 2009 Bucks Co. Boroughs Assoc., Doylestown
- Feb. 26, 2009 PSATS Webinar, Harrisburg
- Feb. 27, 2009 Municipal officials, Lansdale
- March 3, 2009 Reps. Kreiger and Reese RTKL event, Youngwood
- March 3, 2009 Reps. Christiana and Marshall RTKL event, Midland
- March 5, 2009 PA Municipal Authority Assoc., Mars
- March 9, 2009 Municipal officials, Madera
- March 12, 2009 PA Assoc. of Realtors, Camp Hill
- March 12, 2009 PA Municipal Authority Assoc. board, Bethlehem
- March 13, 2009 CLE for DAs and public defenders, Pittsburgh
- March 14, 2009 League of Women Voters, Stroudsburg
- March 17, 2009 CCAP IT coordinators, Harrisburg
- March 19, 2009 Sen. Eichelberger community event, McConnellsburg
- March 23, 2009 Susquehanna Co. municipal officials, New Milford
- March 24, 2009 PA Assoc. of Realtors, Harrisburg
- March 25, 2009 PA Healthcare Cost Containment Council, Harrisburg
- March 26, 2009 PELRAS conference, State College
- March 30, 2009 PA Public Purchasing Assoc., Manheim
- March 30, 2009 CCAP state convention, Harrisburg
- April 2, 2009 Sen. Baker RTKL event, Dallas
- April 2, 2009 Pittsburgh Post-Gazette staff
- April 3, 2009 Allegheny League of Municipalities, Seven Springs



- April 6, 2009 Franklin Co. Bar Assoc., Chambersburg
- April 14, 2009 Berks Co. Bar Assoc., Reading
- April 14, 2009 Naumann Smith RTKL event, Harrisburg
- April 15, 2009 Naumann Smith RTKL event, Camp Hill
- April 20, 2009 PSATS annual conference, Hershey
- April 21, 2009 Chester Co. Bar Assoc., West Chester
- April 23, 2009 PA Mental Health / Retardation Program Admin. Assoc., Harrisburg
- April 24, 2009 Southcentral PA Regional Counter Terrorism Task Force, York
- April 27, 2009 Elkins Park municipal officials
- April 28, 2009 Mercer Co. Planning Comm., Hermitage
- April 29, 2009 Westtown Twp. employees
- April 30, 2009 Municipal officials, White Haven
- May 4, 2009 PA Assoc. of Broadcasters, Hershey
- May 6, 2009, NW Planning Comm. Conference, Titusville
- May 8, 2009 PA Bar Institute, Hershey
- May 12, 2009 Montgomery Co. Bar Assoc., Norristown
- May 14, 2009 Delaware Co. Tax Collectors Assoc., Chester
- May 19, 2009 St. Nicholas Seniors, Steelton
- May 21, 2009 Monroe Co. Tax Collectors Assoc., Snyder'sville
- May 22, 2009 Western PA Local Income Tax Assoc., Hermitage
- May 28, 2009 Berks Co. school superintendents, Reading
- May 29, 2009 PA APME, Gettysburg
- May 30, 2009 PA Women's Press Assoc., Gettysburg
- June 9, 2009 County Treasurer Assoc., Skytop
- June 10, 2009 City of Reading staff
- June 11, 2009 PNA Media Law Conf., Hershey
- June 13, 2009 Allegheny Co. Airport Authority, Pittsburgh
- June 16, 2009 Rep. Quinn RTKL event, Doylestown
- June 16, 2009 Lorman RTKL seminar, Philadelphia
- June 27, 2009 Fayette Co. staff, Uniontown
- July 16, 2009 PA Sheriffs Assoc., Cranberry Twp.
- Aug. 21, 2009 PA Local Govt Secretaries Assoc., Malvern
- Aug. 24, 2009 Bala Cynwyd citizens group
- Sept. 14, 2009 PA Municipal Authorities Assoc., Hershey
- Sept. 17, 2009 Allegheny IU, Pittsburgh
- Sept. 20, 2009 Lorman RTKL seminar, Harrisburg
- Sept. 21, 2009 PEITOAC Annual Meeting, Lancaster
- Sept. 21, 2009 OOR state-wide RTKL training, Harrisburg
- Sept. 25, 2009 Bucks Co. bench/bar CLE, Cambridge, MD
- Sept. 25, 2009 Montgomery Co. township officials, East Norriton
- Sept. 29, 2009 OOR state-wide RTKL training session, Harrisburg
- Sept. 30, 2009 Lancaster-Lebanon IU, Lancaster
- Oct. 9, 2009 Lancaster-Lebanon IU leadership council, Lancaster
- Oct. 14, 2009 PSBA school secretaries, Hershey
- Oct. 20, 2009 PSATS township officials, Moon Twp.
- Oct. 22, 2009 PA Business Privilege & Mercantile Tax Collectors Assoc., Gettysburg
- Oct. 27, 2009 PSATS township officials, Clarks Summit
- Oct. 29, 2009 Bucks Co. Assn. of Township Officials, Ivyland
- Nov. 12, 2009, PSATS township officials, Enola
- Nov. 17, 2009 Lancaster County Bar Assoc. RTKL CLE, Lancaster
- Nov. 18, 2009 PSATS township officials, State College
- Nov. 18, 2009 IBEW RTKL event, Harrisburg
- Nov. 24, 2009 PSATS township officials, West Chester
- Dec. 1, 2009, Tax collectors RTKL seminar, Conshohocken



Since the OOR issued its first Final Determination in February 2009, our cases have been written about by national, state and local news organizations. Many papers have editorialized about our decisions and have both challenged and praised them. Open government issues, including our Final Determinations, have been written about by *The New York Times*, *Philadelphia Inquirer*, *Pittsburgh Post-Gazette*, *Philadelphia Daily News*, *Pittsburgh Tribune-Review*, *The Morning Call*, *The Patriot-News*, *Delaware County Daily Times*, *York Daily Record*, *The Herald*, *The Sentinel*, *Scranton Times*, *Erie Times-News*, *Pocono Record*, *Reading Eagle*, *Intelligencer Journal*, *Beaver County Times*, *The Times Leader*, *Pottsville Republican*, *The Daily News* and *Ellwood City Ledger*.

The Office of Open Records and/or its Executive Director Terry Mutchler was profiled in newspapers and magazines across the state and has been a frequent guest on television and radio public affairs shows around Pennsylvania including the Pennsylvania Cable Network and “SmartTalk” on WITF-FM in Harrisburg.

The National Freedom of Information Coalition at the University of Missouri previously ranked Pennsylvania among the worst in the nation for open government issues. Under the new law, the Coalition ranked Pennsylvania in the top 20 states for open government success. Because of this, many states have reached out to the OOR Executive Director seeking advice on how to start similar state agencies. She has testified before committees of Congress and the Washington State Legislature. Officials in Maryland, Ohio and California have also sought recommendations on creating a similar office to the OOR.



Terry Mutchler, Executive Director

Gov. Edward G. Rendell appointed Terry Mutchler, a lawyer and former journalist, to a six-year term in April, 2008.

Prior to accepting this position, Ms. Mutchler served as Illinois' first Public Access Counselor to enforce the state's sunshine laws and also served as a senior advisor and speech writer for the Attorney General.

She previously worked at a national law firm in its media law group and appellate practice group in Chicago. She is a former law clerk for a retired Chief Justice of the Illinois Supreme Court, and also clerked for the Executive Office of the President during the Clinton Administration focusing on privacy issues. Before becoming an attorney, Ms. Mutchler was an investigative journalist for The Associated Press in Pennsylvania, New Jersey, Alaska and Illinois, where she was the first woman appointed as Statehouse Bureau Chief. She later served as a senior advisor and speech writer for the late Illinois Senate Minority Whip.

Mutchler received her bachelors from the Pennsylvania State University and her *juris doctor* from the John Marshall School of Law in Chicago. She was selected as a Bohnett Summer Fellow at the Kennedy School of Government, Harvard University.

Barry Fox, Deputy Director

A newspaper reporter for 23 years Mr. Fox was named the deputy director of Pennsylvania's new Office of Open Records in August, 2008. During his time in journalism he worked for the weekly South Street Star in Philadelphia, two daily newspapers in New Jersey and spent the bulk of his career with The Patriot-News in Harrisburg

Corinna Wilson, Chief Counsel

Ms. Wilson came to the Office of Open Records after nearly a decade with the Pennsylvania Newspaper Association, as general counsel and later chief operating officer. Prior to her work with PNA she was in private law practice at Fredrikson & Byron, P.A. in Minneapolis and at Buchanan Ingersoll, PC in Harrisburg. She is a graduate of the University of Minnesota Law School, *cum laude* and Sarah Lawrence College in Bronxville, New York.



Dena Lefkowitz, Senior Attorney

The one-time General Counsel to the Chester Upland School District and Assistant General Counsel to the School District of Philadelphia. Ms. Lefkowitz has also been a civil litigator for law firms in Media, Bala Cynwyd, Norristown and Philadelphia. She is a graduate of Temple School of Law.

Lucinda Glinn, Staff Attorney

A litigation attorney and appellate advocate with Harrisburg's Nauman Smith Shissler & Hall LLP before joining the Office of Open Records staff, Ms. Glinn has also been an associate at K&L Gates. She is a graduate of the Georgetown University Law Center and Lafayette College.

Nathanael Byerly, Staff Attorney

A former Special Assistant United States Attorney, Mr. Byerly has also worked in private practice for Knauer & Associates and at the Law Offices of Craig A. Diehl. He is a graduate of the University of Dayton School of Law.

Audrey Buglione, Staff Attorney

Prior to joining the Office of Open Records, Ms. Buglione had her own law firm. She has also been an associate at McNees, Wallace & Nurick, in Harrisburg. Ms. Buglione is a *magna cum laude* graduate of the Widener University School of Law, Harrisburg Campus.

Maryanne Brawley, Executive Assistant

Ms. Brawley came to the Office of Open Records from Bravo Group, a Harrisburg public advocacy firm. She has also been a project coordinator for Thomas J. Carricato & Sons Inc., an officer manager for Premier Funding Inc. and a project accounting manager for Nolen Companies. She is a graduate of University of Maryland with degrees in Accounting and English.

Cindy Watson, Administrative Officer

A former Communications Specialist with Coventry Health Care, Ms. Watson has also been a Paralegal Supervisor and Administrative Officer with the Pennsylvania Dept. of Corrections as well as an Administrative Officer for the Supreme Court of Pennsylvania. She is a graduate of Harrisburg Area Community College with a liberal Arts degree and a Paralegal Certificate.