



pennsylvania

OFFICE OF OPEN RECORDS

2022 ANNUAL REPORT

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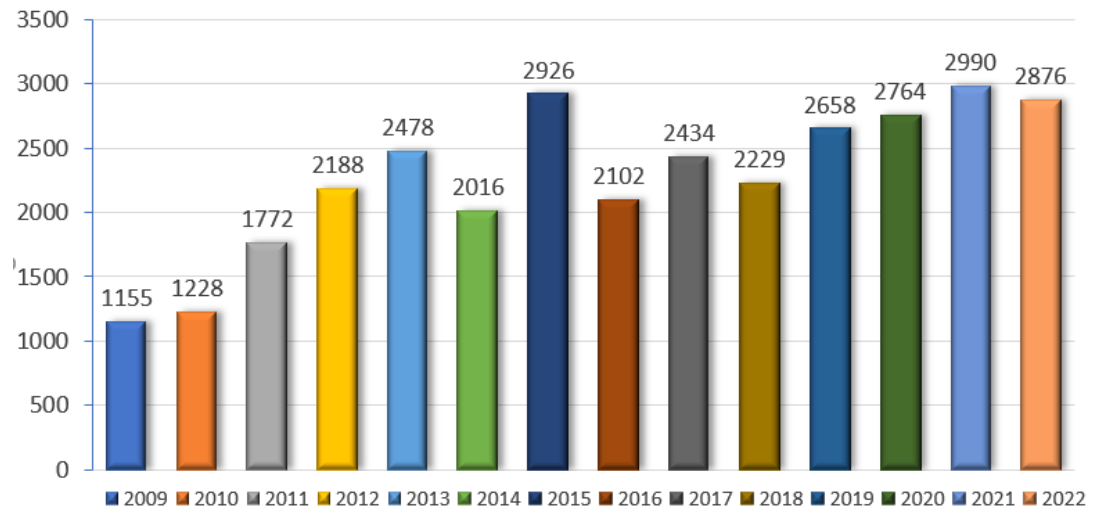
717-346-9903

[@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

2,876*

APPEALS FILED

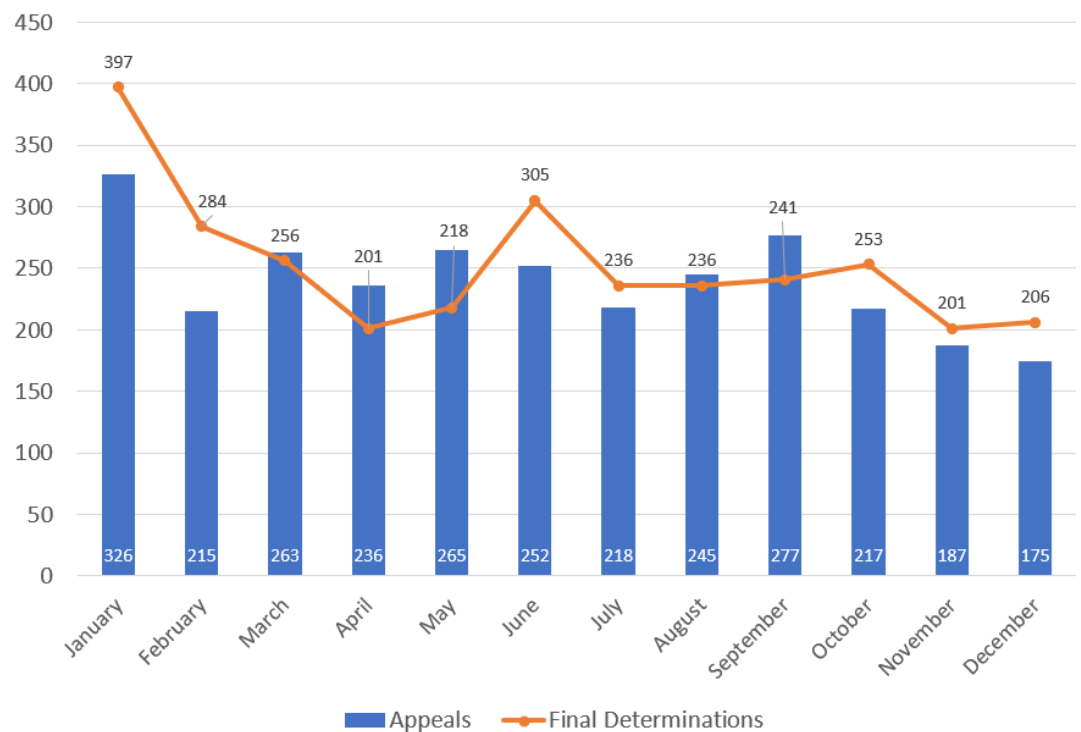
2022 ranks as the third busiest year ever for the Office of Open Records. The current three-year average is 2,877 appeals; the current five-year average is 2,703.



3,034

DECISIONS ISSUED

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

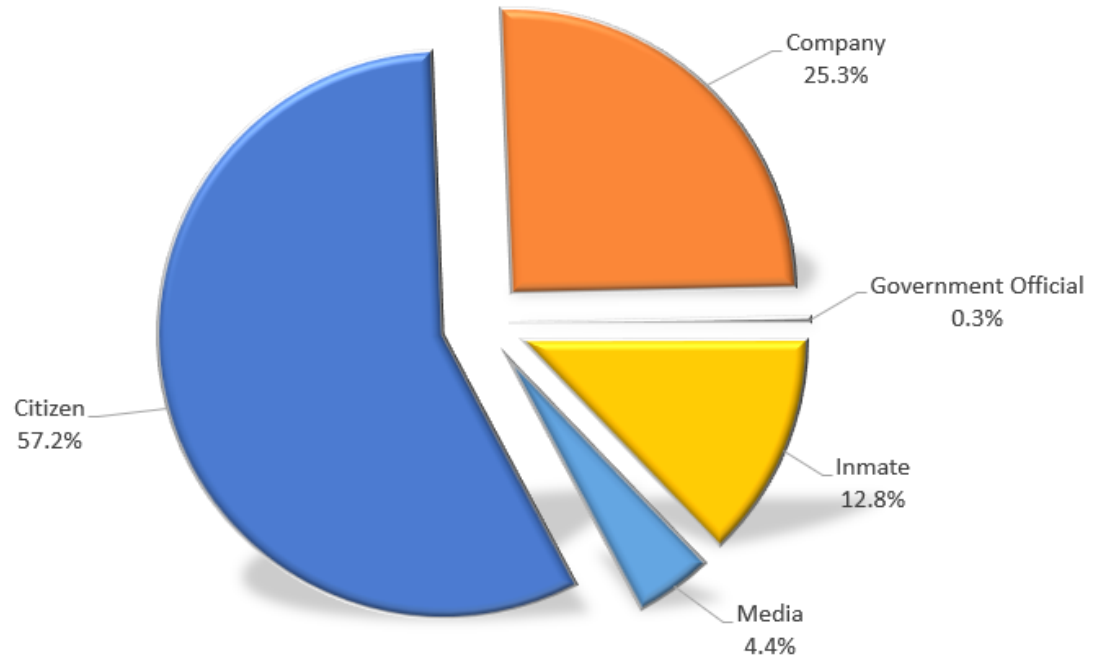


*OOR Dkt. AP 2022-1658 included 571 Right-to-Know Law requests and responses. Due to volume, the appeal was docketed as one appeal instead of 571 separate appeals.

1,644 CITIZEN APPEALS

Over half of the appeals docketed by the OOR in 2022 were filed by everyday citizens. They were followed by:

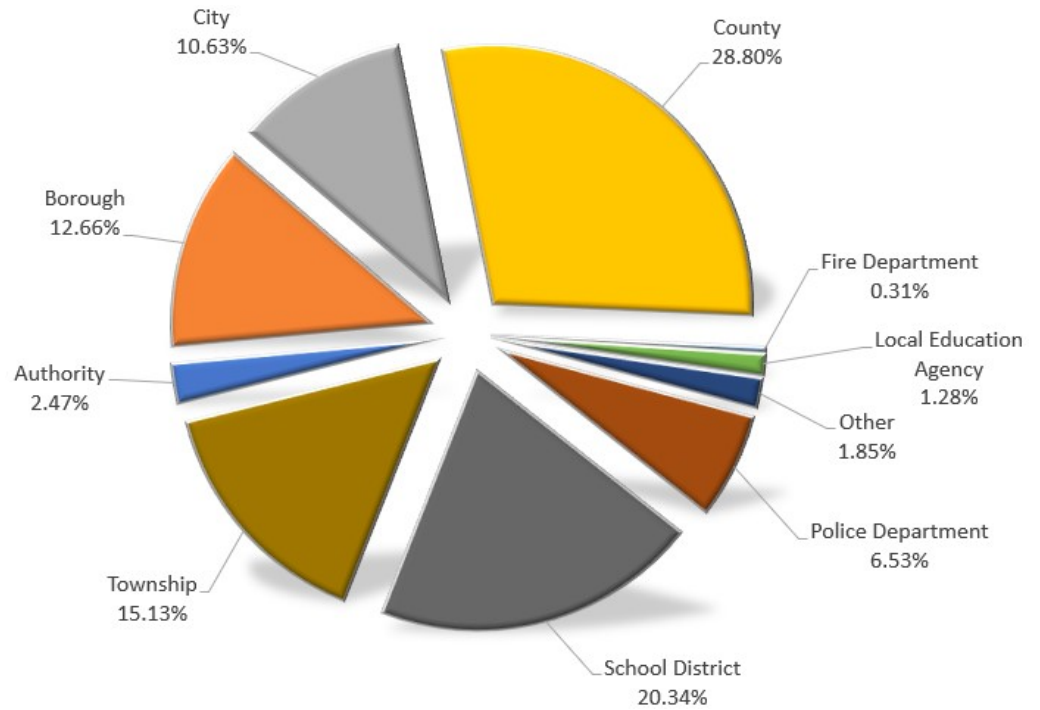
- Companies and Private Organizations, 727
- Inmates, 369
- Media, 127
- Government officials, 9



2,267 APPEALS INVOLVING LOCAL AGENCIES

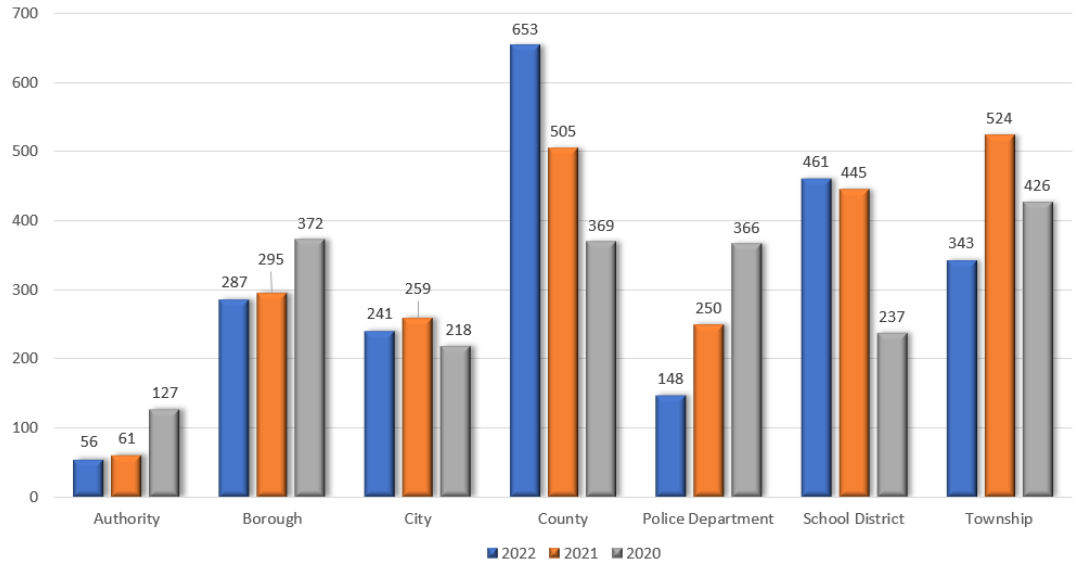
In 2022, municipalities (cities, boroughs, and townships) were involved in 38.42% of appeals filed against local agencies. Here's the complete list:

- Counties, 653
- School Districts, 461
- Townships, 343
- Boroughs, 287
- Cities, 241
- Police Departments, 148
- Authorities, 56
- Other, 42
- Local Education Agencies, 29
- Fire Departments, 7



INCREASE AND DECREASE OF LOCAL AGENCY APPEALS

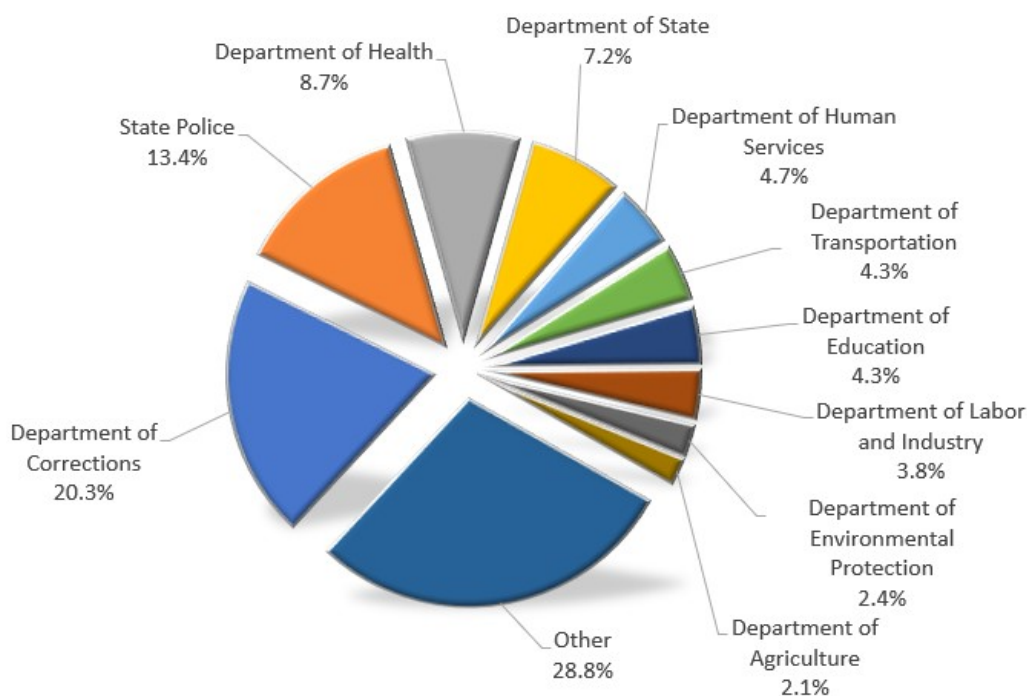
In 2022, local agencies saw noticeable increases and decreases in the number of appeals filed compared to 2020 and 2021.



531 APPEALS INVOLVING STATE AGENCIES

In 2022, the Department of Corrections was involved in more appeals than any other state agency. Here's the full list:

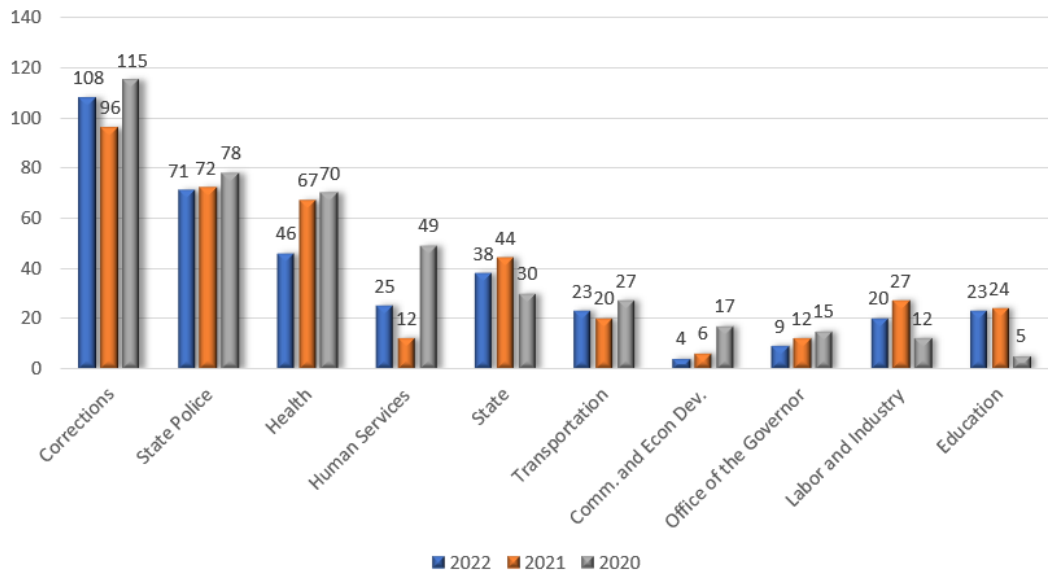
- Department of Corrections, 108
- State Police, 71
- Department of Health, 46
- Department of State, 38
- Department of Human Services, 25
- Department of Transportation, 23
- Department of Education, 23
- Department of Labor & Industry, 20
- Department of Environmental Protection, 13
- Department of Agriculture, 11
- Other, 153



The number of appeals involving local agencies on the previous page (2,267) and the number involving state agencies on this page (531 do not add up to the total of 2,876 appeals listed earlier in this report). The “missing” 78 appeals were filed against judicial agencies, legislative agencies (both of which the OOR has no jurisdiction over), and entities which are not agencies.

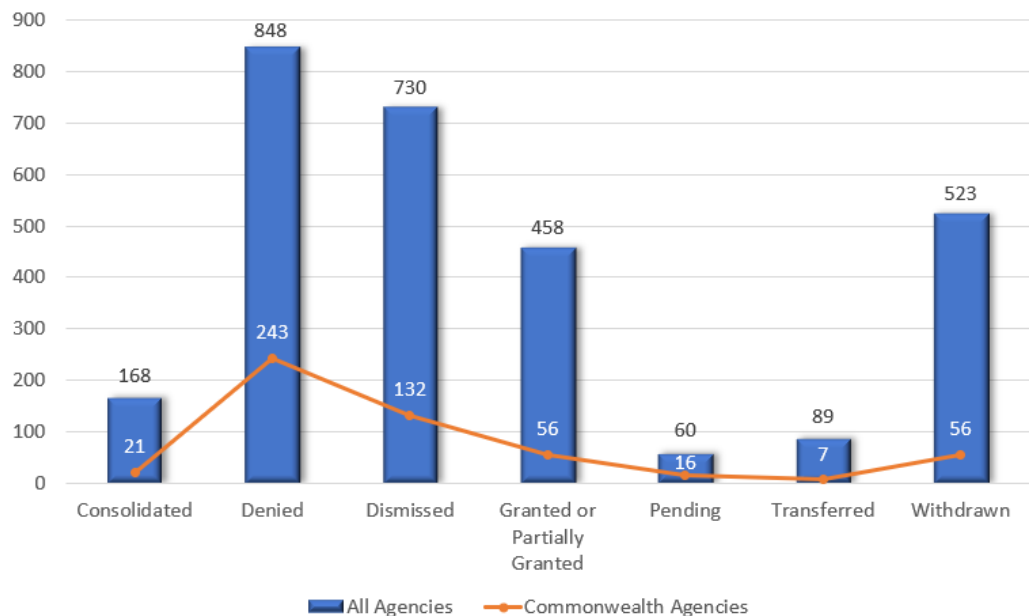
INCREASE AND DECREASE OF STATE AGENCY APPEALS

In 2022, several agencies saw noticeable increases and decreases in the number of appeals filed compared to 2020 and 2021.



BREAKDOWN OF STATE AGENCIES

Requesters obtain access to records when appeals are granted or withdrawn (only the requester can withdraw an appeal). In 2021, 21% of appeals involving state agencies were granted, partially granted, or withdrawn while 46% 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.)

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 2022:

- Noncriminal Investigative Records, (b)(17), 122
- Criminal Investigative Records, (b)(16), 93
- Internal, Predecisional Deliberations, (b)(10), 65
- Personal Identification Information, (b)(6), 65
- Agency Employee Information, (b)(7), 37
- Personal Security, (b)(1), 35
- Public Safety, (b)(2), 31
- Individual Medical Records, (b)(5), 21
- Trade Secret / Confidential Proprietary Information, (b)(11), 19
- Building, Infrastructure and Utility Safety, (b)(3), 19

The OOR's Appeals Officers also heard hundreds of cases in which the agency asserted that the requested records did not exist (406), the request was not specific or asked questions rather than seeking records (170), the requested records weren't in the possession of the agency or were not records of the agency (84), the records are exempt under another State law (72), the request sought records protected by attorney-client privilege (53), or information was protected by the State constitution's right to privacy (37).

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 2022

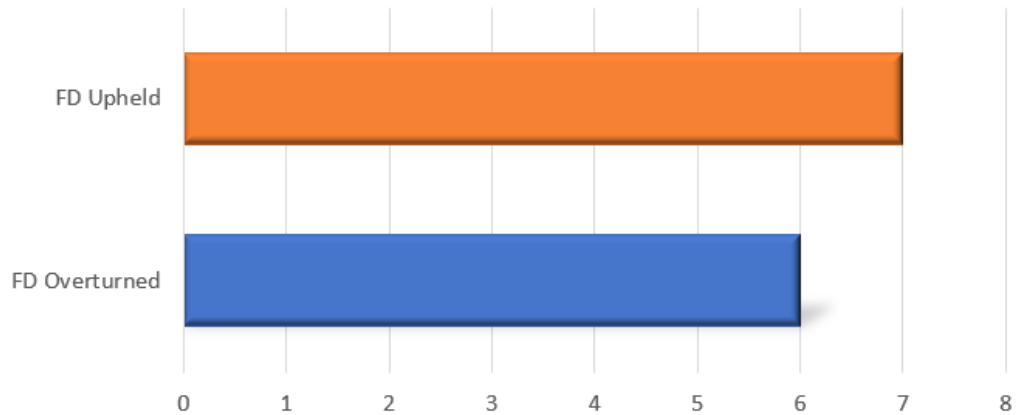
The goal of the RTKL is to make government records available to the public. These records can then be used to hold public officials accountable for their actions.

Here are some of the records accessed via the RTKL in 2022:

1. A school district is paying a former U.S. Attorney \$940 an hour to address a complaint filed against the district.
2. Details of four inmate deaths at a county prison following allegations that the prison had failed to release sufficient information at the time of the deaths.
3. State police declared it never received a background check form that could have alerted a borough to police officer candidate's high-profile killing of a citizen while employed in an out-of-state police force.
4. Settlement records concerning employees terminated for approved medical use of marijuana.
5. An agency-funded study that showed that nearly 900 positions currently held by sworn police officers could be filled by civilians who would be paid substantially less.
6. A large transportation agency failed to track incidents of sexual assaults and harassment against its employees.
7. Only one of twelve city-owned properties has received the required renovations in order to comply with state environmental requirements.
8. More than 100 gas odor complaints were made in the years before a home exploded and killed five people.
9. The Department of Health "rarely uses" its authority to regulate the accuracy of medical cannabis providers' claims regarding the benefits of marijuana use.
10. Most schools in Southwestern PA do not test for radon, a radioactive gas common in buildings in the area that can cause lung cancer.

74 PETITIONS FOR RECONSIDERATION

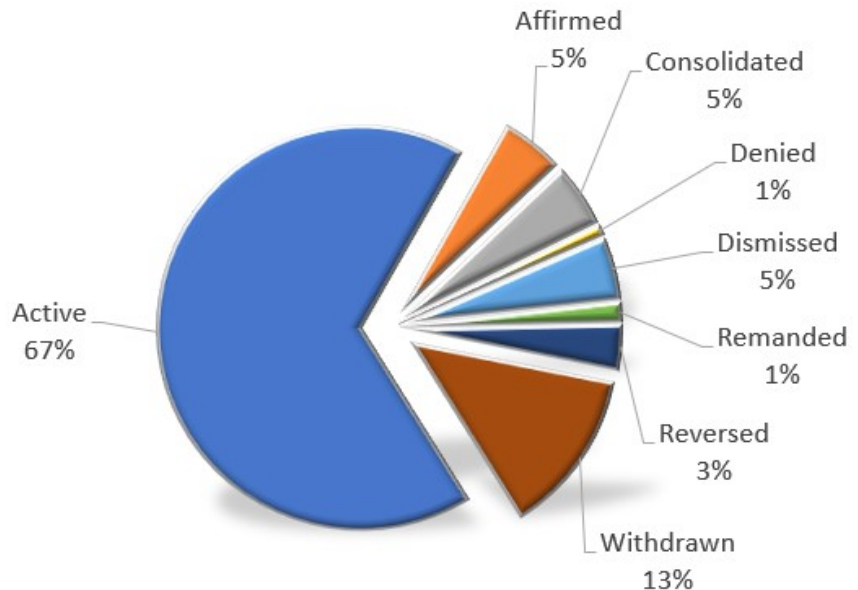
In 2022, requesters filed 56 (76%) requests to reconsider a Final Determination, agencies filed 17 (23%), and a direct interest participant filed 1 (1%). The OOR granted 13 Petitions for Reconsideration, meaning a Final Determination Upon Reconsideration would be issued. Those results are:



146 APPELLATE COURT FILINGS

The OOR continues to monitor 67% of the 2022 appellate filings before the Court of Common Pleas, Commonwealth Court, and Supreme Court. However, 33% have already been decided. A breakdown of these court decision are as follows:

- Affirmed, 7
- Consolidated, 7
- Denied, 1
- Dismissed, 7
- Remanded, 2
- Reversed, 5
- Withdrawn, 19



2022

Accomplishments

Here are some of OOR's accomplishments in 2022:

1. Issued 3,034 decisions, the highest number in our 14 years of existence.
2. Received additional funding to hire two additional appeals officers.
3. Conducted 66 training sessions, including a weekly virtual training session, reaching nearly 3,000 participants.
4. Conducted daily webinars during Sunshine Week in March 2022 with topics including the Sunshine Act, Submitting Affidavits and Evidence to OOR, OOR Mediation Process, Trending RTKL Topics, and Aggregated Data.
5. [Penn Capital-Star](#) published an [editorial](#) by Executive Director Liz Wagenseller highlighting Sunshine Week and government accountability.
6. [Testified](#) at a [hearing](#) before the Senate State Government Committee regarding legislation that would amend RTKL including commercial and inmate requesters and vexatious requests.
7. Executive Director Liz Wagenseller appeared on [This Week in Pennsylvania](#) with Dennis Owens to discuss OOR and RTKL.
8. Launched Phases 1 and 2 of the OOR's E-File Appeal Portal Process, an electronic filing system for online docketing to automate and streamline the RTKL appeal process.
9. Hosted an Annual Training in November to 273 participants discussing topics such as Basics of RTKL and Best Practices and Tips for requesters seeking records and agencies when dealing with requests and appeals.

1,392 RIGHT-TO- KNOW REQUESTS

The OOR set another record in 2022, receiving more RTKL requests than ever before. 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.

94% of RTKL requests filed with the OOR last year were misdirected. 81 requests were for OOR records, usually copies of Final Determinations, case files, Agency Open Records Officer contact information, OOR Twitter messages, staff contact information, calendar entries, internet history, staff resumes, and OOR forms.

24 OOR EMPLOYEES

In 2022, the Office of Open Records issued a record-breaking 3,034 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 stat 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, Erin Burlew, Nathan Byerly, Jordan Davis, Berk Demiral, Dylan Devenyi, Angie Edris, Blake Eilers, Lyle Hartranft, Catherine Hecker, Faith Henry, Katie Higgins, Kelly Isenberg, Bandy Jarosz, Michele Kusery-Grant, Lois Lara, Tope Quadri, Erika Similo, Janelle Sostar, George Spiess, Ian Spiess, Joshua Young, and Magdalene Zeppos-Brown.

Liz Wagenseller
March 13, 2023