

Annual Report



pennsylvania

OFFICE OF OPEN RECORDS

2014



A message from Acting Executive Director Nathan Byerly



Despite a year of uncertainty and transition, the Office of Open Records (“OOR”) remains constant. The dedicated staff of the OOR has ensured that citizens receive a fair, impartial determination on whether a request for government records was properly denied. As Acting Executive Director, I pledge that the OOR will continue to issue decisions free of undue influence that promote transparency and accountability at every level of Pennsylvania government.

As Governor Wolf and his Cabinet begin a new term under this “new” Right-to-Know Law (“RTKL”), I encourage the administration to continue to support the OOR in its daunting task of ensuring openness. As a result, transparency and accountability will continue to improve Pennsylvania government.

Following revolutionary changes to the RTKL led by Senator Dominic Pileggi, interest in the RTKL and its process has not subsided. Over 130,000 people visited the OOR webpage last year alone. Additionally, every month the OOR answers hundreds of inquiries from citizens, agencies, and public officials seeking guidance on how to use the RTKL. Fueled by an unrelenting public interest, the workload for the OOR has intensified.



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In 2014, a sharp increase in the complexity of legal issues required the use of additional resources despite a decrease in appeals received. Such an increase demanded more time and staff to handle the already daunting task of processing and issuing decisions in over 2,000 appeals each year. However, issuing these decisions is only part of the OOR's other statutory duties. The OOR also litigates or monitors hundreds of court cases and conducts mediations, hearings and trainings across the state. In addition, the OOR itself is subject to the RTKL and responded to nearly 800 Right-to-Know Requests in 2014.

Despite the fiscal issues facing the Commonwealth, it is vital that we not lose sight of properly investing in transparency. If government records cannot be accessed, government cannot be held accountable. If the OOR is not properly equipped, transparency and accountability suffer.

Pending amendments to the RTKL and related transparency laws should strengthen and preserve the integrity of the process and procedure of the RTKL and the OOR. Admittedly, these amendments walk a tightrope of balancing the reality of logistical efficiency with the fundamental necessity of transparency. The combined involvement of citizen, official, and agency in the amendment process is imperative. The continued success of any law is more than identifying problems, but proposing solutions and using those proposals to fix the problems.



A message from Acting Executive Director Nathan Byerly

I would be remiss if I did not say a public thank you to the first Executive Director of the OOR, Terry Mutchler, for her years of service to the Commonwealth and her commitment to open government. Her vision and leadership took Pennsylvania from one of the worst ranked states in transparency to one of the best. From a single desk and chair, she forged a quasi-judicial agency that received national praise for its innovative approach to open government. The impact of her dedication and perseverance will be seen for many years to come.

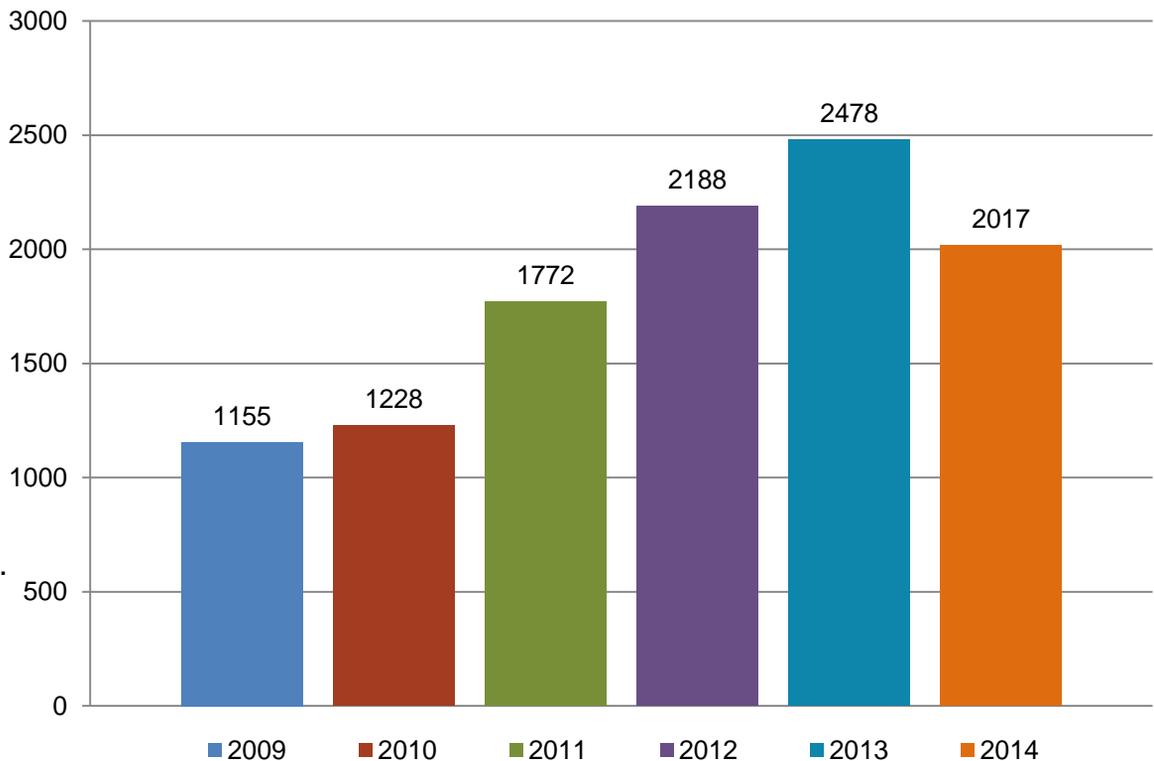
While the journey to openness has faced change and uncertainty, I can say without reservation that the RTKL and the OOR continue to maximize access to records. Knowing that locked doors lead to lost freedoms, I reiterate what the mantra of this office has been since day one: Pennsylvania's government belongs to its citizens.



Appeals Caseload

In 2014, Requesters filed **2,017 appeals** with the OOR, compared with 2,478 in 2013, 2,188 appeals in 2012, 1,772 appeals in 2011, 1,228 appeals in 2010, and 1,159 appeals in 2009, its first year.

Appeals





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History of Appeals

Month/Year	2009	2010	2011	2012	2013	2014	Monthly Totals
January	35	91	103	168	173	171	741
February	93	80	98	123	174	149	717
March	112	112	183	217	192	198	1014
April	106	103	151	186	222	209	977
May	103	93	216	175	199	144	930
June	111	122	157	195	169	146	900
July	106	102	121	193	220	162	904
August	99	94	136	231	235	155	950
September	58	100	125	181	244	177	885
October	113	133	138	180	240	199	1003
November	122	115	166	161	189	125	878
December	97	83	178	178	221	181	938
Yearly Totals	1155	1228	1772	2188	2478	2016	10837



The Impact of the RTKL and the OOR

The RTKL impacts every aspect of life that government touches. Using the RTKL, citizens are empowered by the ability to obtain critical information about their government. As a quasi-judicial agency, the OOR oversees and enforces the RTKL. Transparency is best demonstrated by easy access.

In a fast-paced, hi-tech world, perhaps the greatest demonstration of easy access is the availability of public records on a public webpage. The OOR consistently encourages agencies to make as many records available online as possible, such as financial reports, budgets, contracts, grants, salaries, and similar records. Such access allows citizens not only to assess the efficiency and effectiveness of government, but to also demand and implement change where change is needed.

As demonstrated below, financial records and a concern for government fiscal responsibility continue to be a driving force behind RTKL requests. Citizens are very interested in knowing and tracking how much their government spends, as well as why, when, and where that money is spent. Additionally, there is an increased focus on proper government use and management of resources.

Public safety and security are also matters of great concern as people sought access to information regarding law enforcement practices,



Marcellus Shale gas drilling, environmental reports, and crude oil transportation.

These issues have a direct impact on the health and welfare of the Commonwealth. Such issues emphasize the need for government accountability.

Below is a brief synopsis of situations where records were released or ordered released:

- National events catapulted the use of police dash and body cams to the forefront and the issue of whether those recordings are public. In Pennsylvania, it depends on whether the release of the record is part of an investigation or poses a risk to public safety.
- Railway incidents involving the transportation of crude oil across the Commonwealth led to the release of records detailing how much oil is transported and whether the route of transport is through residential neighborhoods.
- Records relating to delinquent municipal accounts were requested. These records were used to analyze how agencies handle debt collection.
- Numerous records were released regarding agencies use and misuse of taxpayer money. This financial accountability included information regarding legal settlements, salaries, attorney fees, building projects, bonuses, travel, credit card use, and any number of additional expenditure of taxpayer funds. Such information allows



citizens to analyze whether these expenditures are appropriate and whether changes to future expenditures need to be made.

- Records were released showing what drugs the Department of Corrections uses to carry out Pennsylvania executions.
- Records demonstrating the use and impact of SWAT teams in specific neighborhoods.
- Records related to environmental impact issues such as smog, fracking, air and water quality which monitored radiation levels.
- Records showing how many condemned properties are within a certain area.
- Records showing the financial cost of the pursuit and search, and eventual arrest of accused murderer Eric Frein.
- Records relating to circumstances surrounding the illnesses and deaths of inmates in various facilities around the Commonwealth.
- A settlement agreement between a school district and a teacher was ordered released. The teacher had been accused of sexual misconduct with a student and agreed to give up his license in exchange for not being disciplined by state officials.
- The OOR conducted *in camera* review of e-mails where an employee from federal government was copied thus negating the agency's claim that the records were subject to the attorney client privilege or constituted internal pre-decisional deliberations of the agency.



Many still misunderstand the role and function of the OOR in obtaining records. Here is how it works.

A requester may submit a written request to an agency seeking records. An agency has five business days to respond to that request. If an agency denies the request or fails to respond within five business days, the requester can appeal to the OOR within fifteen business days.

After assigning an appeals officer, the OOR permits both the requester and agency to submit evidence and arguments in support of their positions. After carefully weighing the evidence and legal arguments presented, the OOR issues a binding Final Determination within twenty business days.

In addition to handling nearly 11,000 appeals, the OOR also:

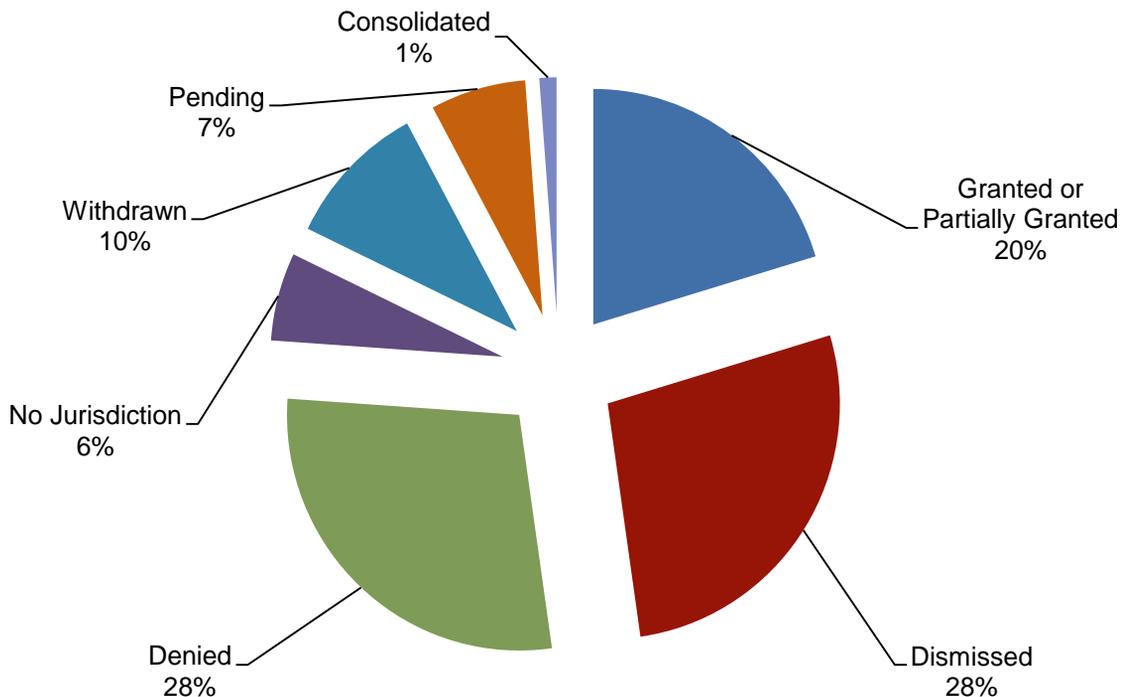
- Trains citizens as well as local and state officials in the law
- Conducts hearings, mediations, and *in camera* review (the OOR reviews the actual records requested and determines whether they are public)
- Reviews fees charged by Agencies
- Maintains a website with nearly 500,000 page views annually
- Answers questions about the law via phone or e-mail
- Monitors over 800 active court appeals



Breakdown of total appeals as of 12/31/2014

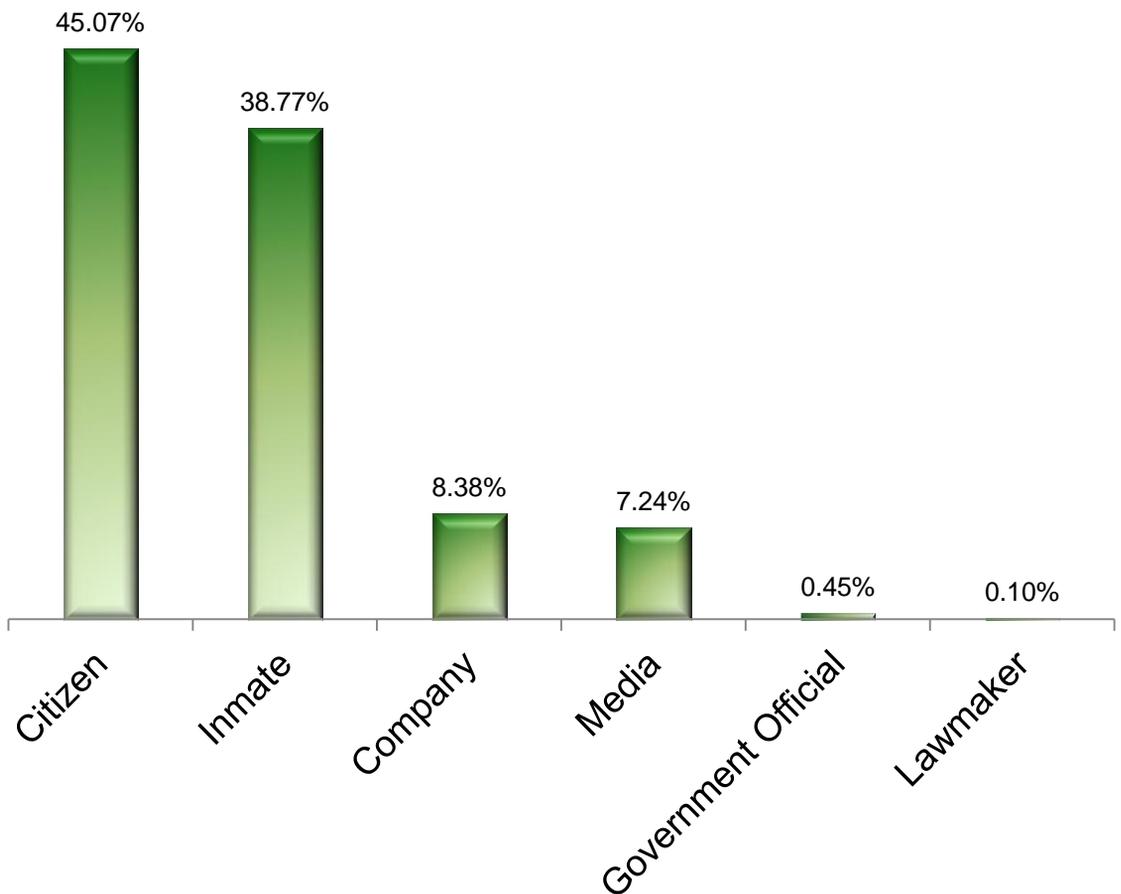
2017 Appeals Filed

410	Granted or Partially Granted	202	Withdrawn
553	Dismissed	134	Pending
572	Denied	24	Consolidated
122	No Jurisdiction		





Appeal Percentage by Requester Type

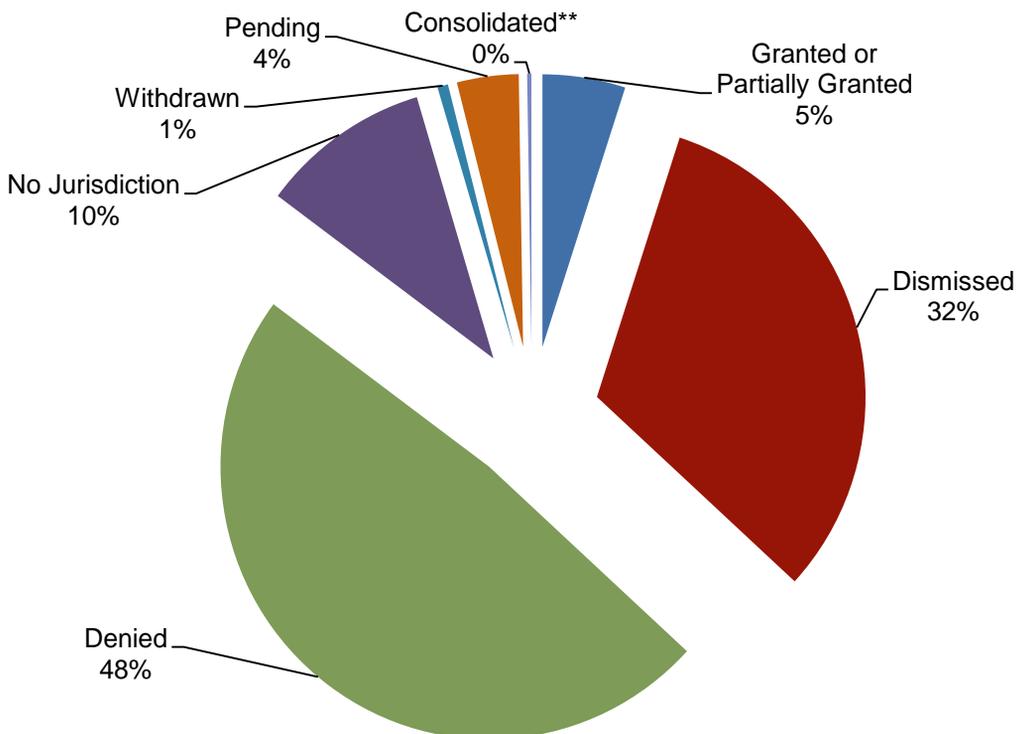




Breakdown of inmate appeals as of 12/31/2014

782 Appeals Filed by Inmates

39	Granted or Partially Granted	5	Withdrawn
249	Dismissed	29	Pending
378	Denied	2	Consolidated
80	No Jurisdiction		



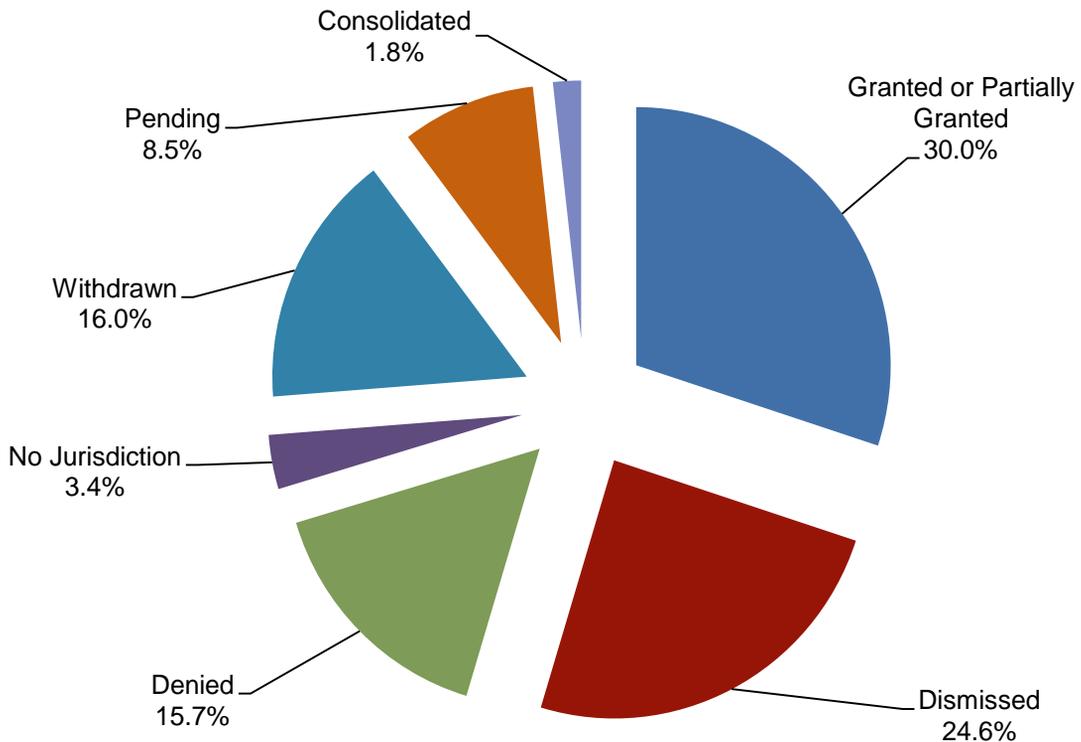
**Consolidated percentage is 0.26% and rounded up equals 0%



Breakdown of remaining appeals as of 12/31/2014

1235 Appeals Filed by
Citizens, Companies, Government Officials, Lawmakers, and Media

371	Granted or Partially Granted	197	Withdrawn
304	Dismissed	105	Pending
194	Denied	22	Consolidated
42	No Jurisdiction		





Breakdown of the inmate appeals filed involving Commonwealth and Local Agencies

573 involving State Agencies:

- 27 Granted or partially granted
- 2 Withdrawn
- 164 Dismissed
- 18 No Jurisdiction
- 341 Denied
- 1 Consolidated
- 20 Pending

210 involving Local Agencies:

- 12 Granted or partially granted
- 3 Withdrawn
- 85 Dismissed
- 62 No Jurisdiction
- 37 Denied
- 1 Consolidated
- 10 Pending



Breakdown of the remaining appeals filed involving Commonwealth and Local Agencies

256 involving State Agencies:

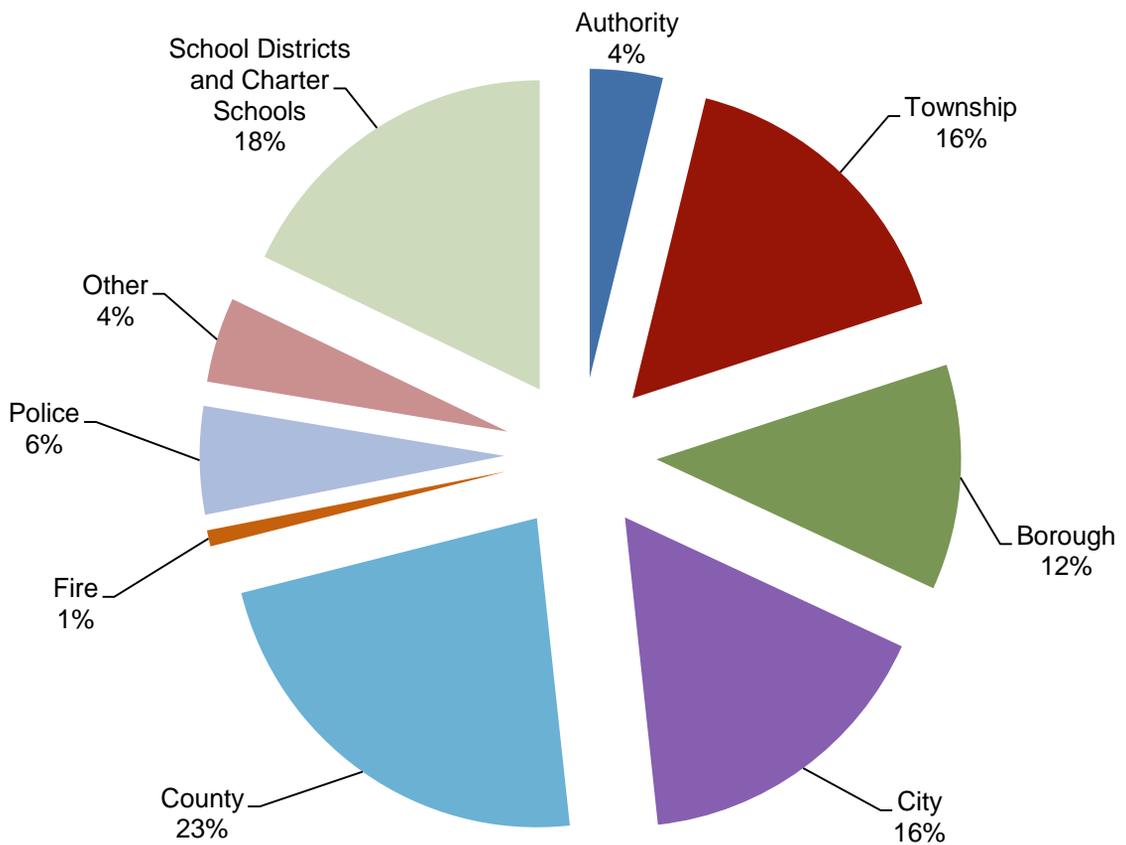
- 59 Granted or partially granted
- 52 Withdrawn
- 51 Dismissed
- 6 No Jurisdiction
- 63 Denied
- 2 Consolidated
- 23 Pending

978 involving Local Agencies:

- 312 Granted or partially granted
- 145 Withdrawn
- 253 Dismissed
- 36 No Jurisdiction
- 131 Denied
- 20 Consolidated
- 81 Pending



Appeals Involving Local Agencies





Most Appeals Filed with the OOR:

Philadelphia Federation of Teachers (Company)	50
Construction Journal (Media)	34
William Rohland (Inmate)	34
Jack Williams (City Councilman)	31

Most Appeals Filed Involving Commonwealth Agencies

Dept. of Corrections	475
State Police	66
Board of Probation and Parole	32
Dept. of Transportation	30
Dept. of State	26

Most Appeals Filed Involving Local Agencies

*City of Philadelphia	86
*Philadelphia County	49
*City of Johnstown	39
*Luzerne County	33

* And all departments and agencies within



In addition to nearly 11,000 appeals, the OOR is actively involved in appellate litigation surrounding the RTKL. The General Assembly granted the OOR the unique right to respond to a court appeal of any of its Final Determinations. As a result, the OOR regularly litigates in the courts protecting the intent and purpose of the law by involvement in cases surrounding the process, procedure, and authority of the RTKL and OOR.

The OOR has monitored or been involved in over 850 court appeals and has argued a case in the Pennsylvania Supreme Court every year since 2011; and anticipates to do so again this year. OOR attorneys regularly appear before the Commonwealth Court filing briefs, conducting oral arguments and attending hearings.

While the courts have held that the OOR is not a party in RTKL court appeals, the OOR was required to defend itself as a named party in numerous court appeals in 2014. This typically occurred in the County Courts of Common Pleas. At a minimum, these cases required a filing with the court asking that the matter be dismissed and at a maximum required attendance at a hearing.

The OOR obtained and reviewed the records of agencies (*in camera* review) in 33 different cases. The office filed one enforcement action when agencies refused to turn over records so that the OOR could



determine if the records were public. The Commonwealth Court has reiterated in numerous cases the OOR's authority to conduct such a review.

The appellate courts issued many decisions providing further clarification and guidance for parties seeking to use the RTKL in 2014. Below is a synopsis of some of those decisions. Copies of these and all Supreme and Commonwealth Court decisions are available on the OOR's webpage.

In ***Office of Open Records v. Center Township***, 95 A.3d 354 (Pa. Commw. Ct. 2014), the Court reinforced the OOR's authority when it held that the OOR can order the production of records for *in camera* review. *In camera* review involves the OOR actually looking at the requested records to determine whether they are subject to public disclosure.

In ***Dep't of L & I v. Heltzel***, 90 A.3d 483 (Pa. Commw. Ct. 2014) the Court authorized the OOR's interpretation of other statutes regarding access to records and the interplay between statutes that govern the method of accessing records and statutes that make records public. Specifically, the Court held that the OOR had the jurisdiction to determine whether a record was confidential under Federal law.



The Pennsylvania Supreme Court, in **Commonwealth v. Donahue**, 98 A.3d 1223 (Pa. 2014), clarified that an agency is not required to respond to a request until the request is received by the agency's Open Records Officer. The Supreme Court concluded that agencies are presumed to act in good faith and not delay forwarding requests to the Open Records Officer, but the time to respond did not commence until the Open Records Officer received the request.

Sturgis v. Dep't of Corrections, 96 A.3d 445 (Pa. Commw. Ct. 2014), wherein the Court held that if an agency doesn't possess the requested records, the agency is not required to locate those records from another agency which may have the records (unless § 506(d) applies).

In **Clinkscale v. Dep't of Pub. Welf.**, 101 A.3d 137 (Pa. Commw. Ct. 2014) a requester sought records from her own case file. The Court concluded that the requester was not entitled to the records under the RTKL because the law was written to be interpreted without regard to the identity of the requester. While an individual may have a separate right to government records under another law, the RTKL doesn't distinguish between individual requesters and the general public. If the records are available to an individual under the RTKL, the records are available to everyone.



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Litigation

In ***Hunsicker v. Pa. State Police***, 93 A.3d 911 (Pa. Commw. Ct. 2014), the Court held that investigative records are not subject to disclosure. The requester sought information regarding the shooting death of her brother. While sympathetic to the requester's plight, the Court again reiterated that the status of the requester is not relevant under the RTKL. The Court also held that police incident reports are not subject to redaction, but are exempt in their entirety.



Like all Commonwealth agencies, the OOR is subject to the RTKL. In 2014, the OOR received 775 requests for records of our agency:

- 693 *requests were misdirected requests*
- 77 *requests were granted or partially granted*
- 2 *requests were denied for no responsive records existing*
- 2 *requests were denied*
- 1 *request was withdrawn*

The OOR has granted access to the following records:

- *Names and titles of OOR staff*
- *OOR staff salaries*
- *OOR Procedural Guidelines*
- *OOR Citizens' Guide*
- *E-mails*
- *Home address of the Executive Director*
- *Copies of the Pennsylvania Constitution and the RTKL*
- *Appeal information contained in certain docketed appeals*
- *Names of requesters filing most appeals with the OOR*
- *OOR request and appeal forms*
- *Open Records Officers of agencies*



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Training

In addition to answering telephone and e-mail inquiries, the OOR continues to provide statutorily-mandated regional trainings across the state to local municipalities, citizens, public employees, solicitors and organizations.

In the last six years, the OOR has conducted nearly 900 trainings. These trainings are vital to assisting requesters and especially agencies comply with the law in an efficient and cost-effective manner.

As mandated by law, the OOR held its Annual Training in October at the State Museum located in Harrisburg. Over 140 people attended including lawmakers, agency representatives, media outlets, and members of the public. The training focused on the RTKL providing a brief overview of the law, the procedural requirements and impact of the law, hot topic issues, and recent court opinions. The training also included a brief overview of the Sunshine Law.



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Mediation

The OOR maintains and operates an informal mediation program designed to promote access to records outside of formal appeals. The goal of informal mediation is to resolve disputes between an agency and a requester without undergoing a formal hearing process and to avoid litigation once the administrative procedures for appeals by the OOR have been exhausted.

Mediation allows an agency to better understand a request so that a requester can receive the records he or she actually seeks. Mediation reduces the burden of production that a voluminous request places on an agency, as well as reduces potential financial costs to the requester. In 2014, the OOR conducted four mediations.