Annual Report

2015

pennsylvania

OFFICE OF OPEN RECORDS

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Introduction

2015

A Year of Change for the OOR

In some ways, 2015 was a year of dramatic change for the Office of Open Records. At the same time, the OOR's primary duties — deciding appeals under the Right-to-Know Law and providing training on the RTKL and the Sunshine Act — continued unabated.

I was honored when Governor Tom Corbett appointed me to serve as Executive Director of the OOR, and I'm pleased to have developed a strong working relationship with the administration of Governor Tom Wolf, particularly DCED Secretary Dennis Davin and his staff. Likewise, members of the General Assembly — of both parties — have been remarkably supportive.

I'll always cherish my 18 years working in the Senate, especially working with Senator Dominic Pileggi, now Judge Pileggi, as the RTKL made its way through the legislature in 2007 and 2008.

The RTKL helps citizens hold their government accountable and the OOR is a critical part of that process. I look forward to leading this agency in the years ahead.

Erik Arneson, Executive Director
March 2016

Staff

17

OOR Staff Members in 2015

It's impossible to overstate how amazing the staff of the OOR was in 2015, handing a record-level caseload and producing outstanding work all around.

Pictured, from left to right: Jordan Davis, Charles Rees Brown, George Spiess, Carolyn Shuman, Janelle Sostar, Joshua Young, Delene Lantz-Johnson, Kathleen Higgins, Erik Arneson, Bina Singh, Nathan Byerly, Jill Wolfe, Kyle Applegate, Faith Henry, Ben Lorah, Magdalene Zeppos, and J. Chadwick Schnee.

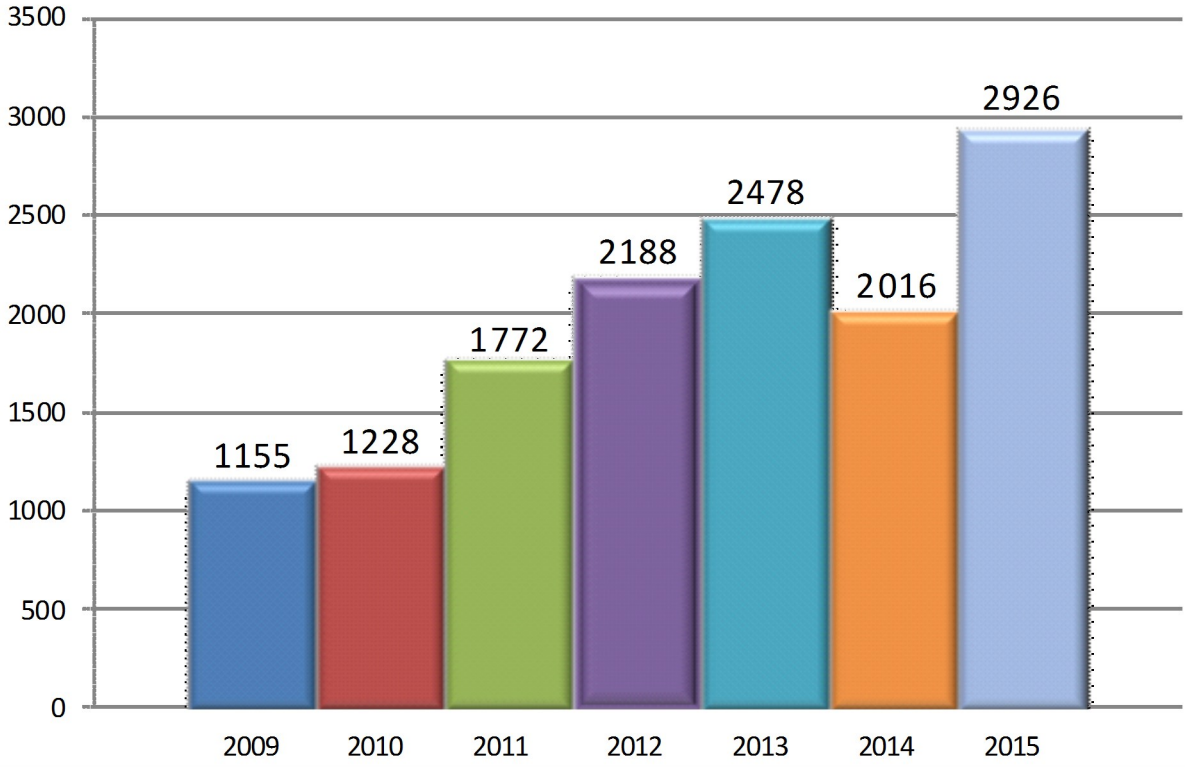
Appeals

2,926

Appeals Filed with the OOR in 2015

2015 was the busiest year ever — by far — for the OOR. The total of 2,926 appeals eclipsed the previous record of 2,478 appeals filed in 2013.

Beyond the numbers, the complexity of cases before the OOR also increased significantly in 2015. As both requesters and agencies gain experience with the RTKL, and as the body of case law develops, appeals tend to present more complicated and nuanced issues for the OOR to decide.



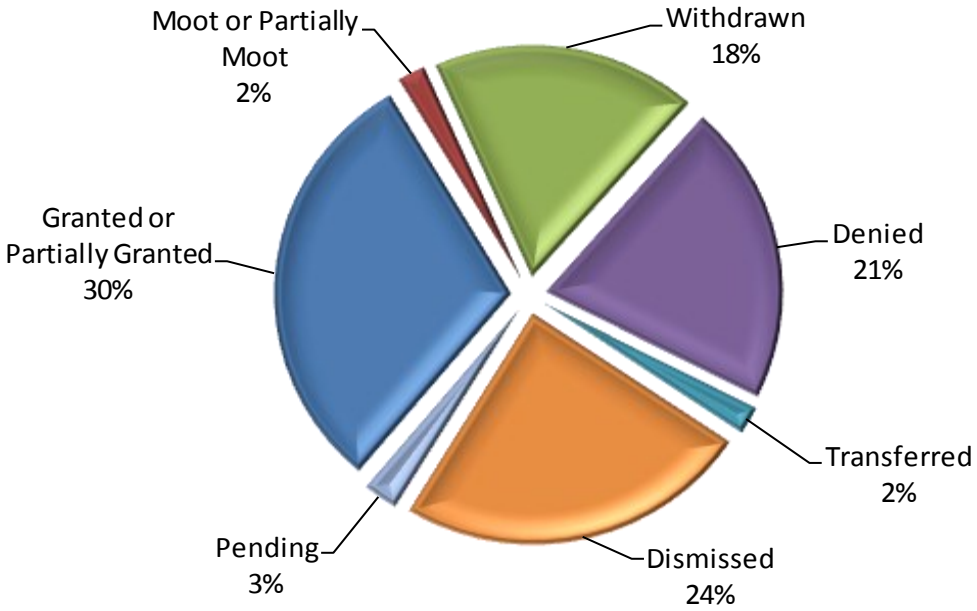
Appeals

1,463

Appeals Granted, Withdrawn or Found Moot in 2015

Appeals can be grouped into six categories: granted, withdrawn, moot, denied, dismissed, and transferred.

Requesters obviously gain access to records when appeals are granted. Less obvious is that they often gain access when appeals are withdrawn (only the requester can withdraw an appeal) or found to be moot (usually because records were provided during the appeal).



The most common reason appeals are dismissed is that they're filed too early or too late. (Appeals filed too early can be refiled.) Appeals are transferred when the OOR isn't the proper venue for an appeal (e.g., appeals involving a judicial office or statewide row office). This chart shows the results of non-inmate appeals. On July 21, 2016, this page was updated to correct the total at the top of the page (1,463).

Training

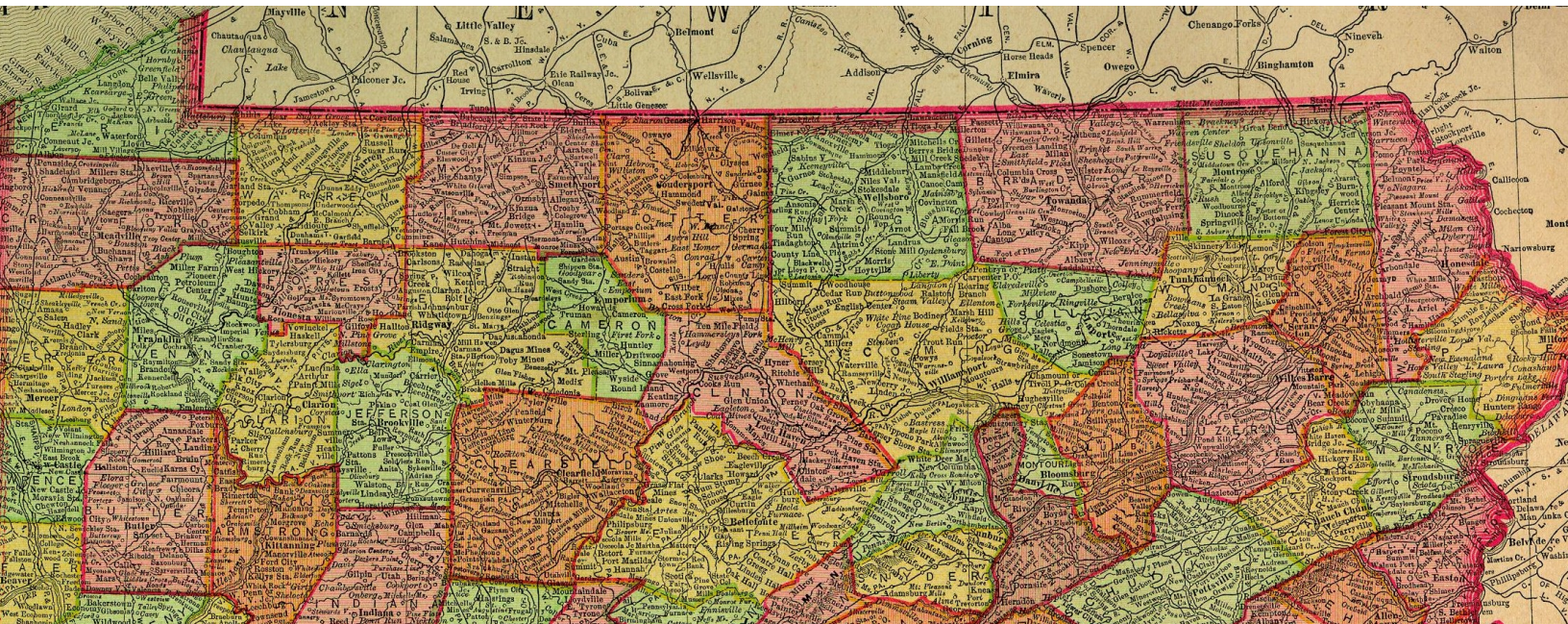
54

Trainings Conducted by the OOR in 2015

We love training people about the Right-to-Know Law and the Sunshine Act. In 2015, the OOR conducted 54 training sessions across the state. Approximately 1,500 public officials, agency employees, and requesters attended these sessions.

We traveled to fantastic cities and towns like Abington, Allentown, Bedford, Butler, Camp Hill, Chadds Ford, Charleroi, Damascus, Doylestown, Enola, Erie, Fort Washington, Harrisburg, Hershey, Meadville, Mount Pocono, Pittsburgh, Reading, Sayre, Scranton, State College, Warrington, and West Chester.

Our goal is to do even more this year. Let us know if you'd like to host a training session.



Mediation

8

Successful Mediations in 2015

Mediation is a great way — often the best way — to resolve disputes between requesters and agencies. The OOR started to emphasize its Mediation Program in the fourth quarter of 2015.

Mediations, which can be conducted via telephone or in face-to-face meetings, are all overseen by an OOR mediator. If a mediation is successful, the requester withdraws the appeal once he or she is satisfied with the agency's compliance with the mediated agreement. If mediation isn't successful, the standard appeal process begins.

In other words, there's no downside to trying to resolve an appeal with mediation.

We expect the number of successful mediations to increase significantly in 2016.

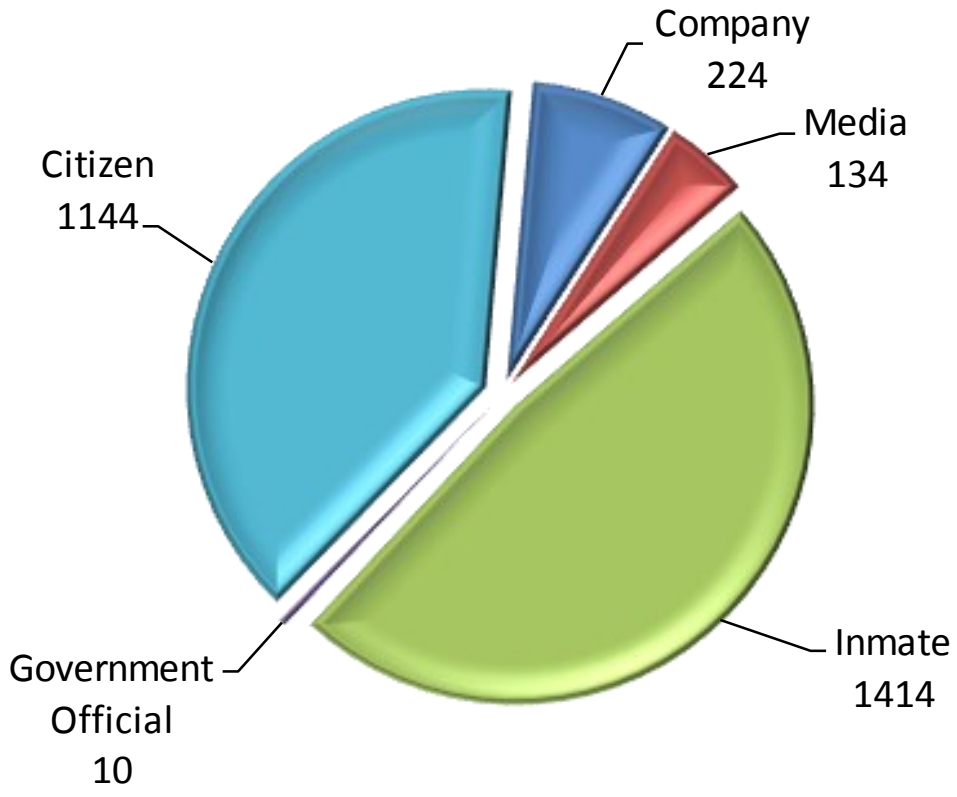
Inmate Appeals

1,414

Appeals Filed by Inmates in 2015

For the first time ever in 2015, inmates (48%) filed more appeals with the OOR than any other requester group.

Citizens filed 39% of appeals, companies 8%, media outlets 5%, and government officials 0.3%.



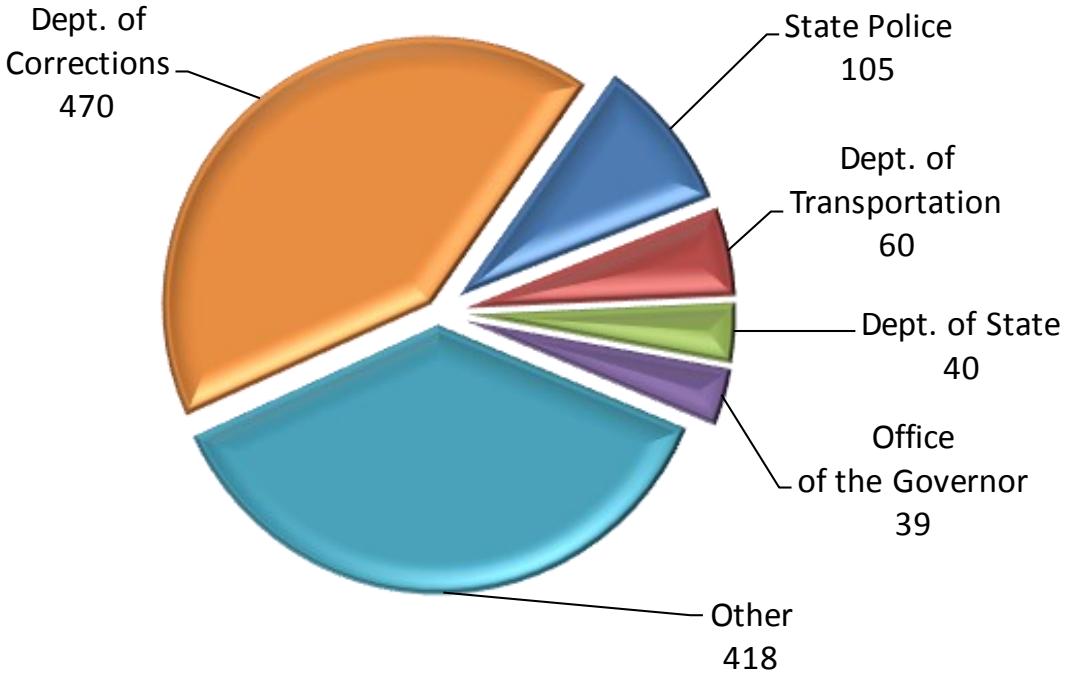
State Appeals

1,132

Appeals Involving State Agencies in 2015

Once again, the Department of Corrections (41.5%) was involved in more appeals than any other state agency. The vast majority of appeals involving DOC were filed by inmates.

The State Police were involved in 9.2% of state agency appeals, followed by the Dept. of Transportation (5.3%), the Dept. of State (3.5%), and the Governor's Office (3.4%).



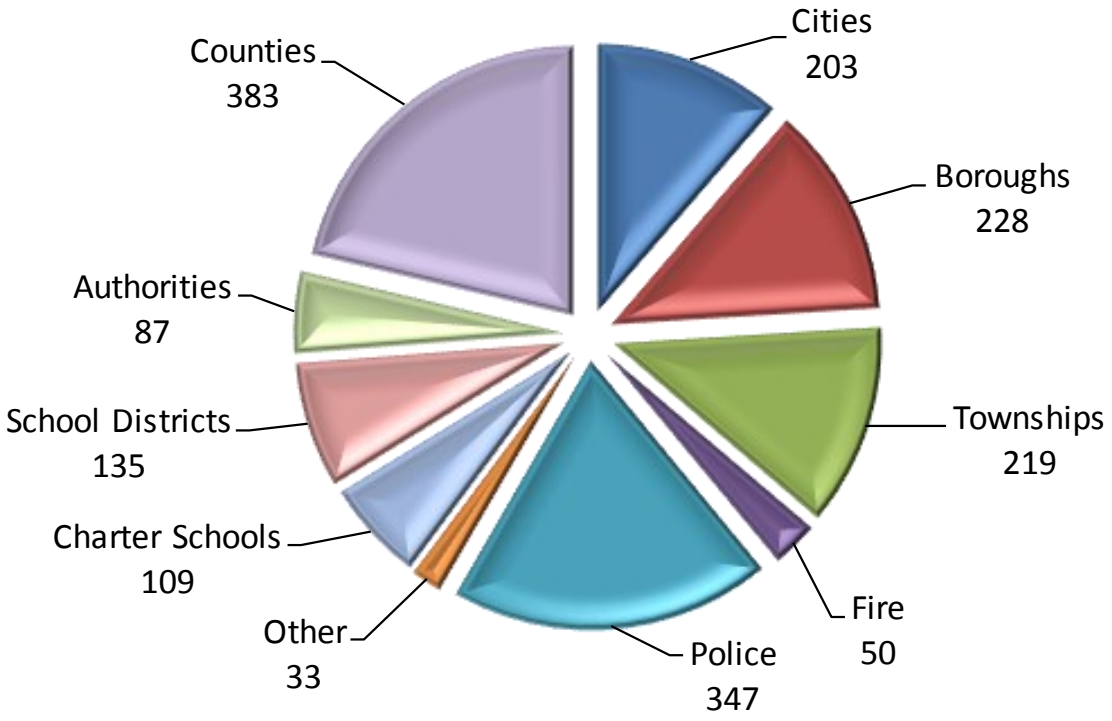
Local Appeals

1,794

Appeals Involving Local Agencies in 2015

Among local agencies, municipal governments (cities, boroughs, and townships) were involved in the most appeals last year: 36%. If you include local police and fire departments, that percentage jumps to 58%.

Counties were involved in 21% of local agency appeals. School districts (8%) and charter schools (6%) combined for 14%.

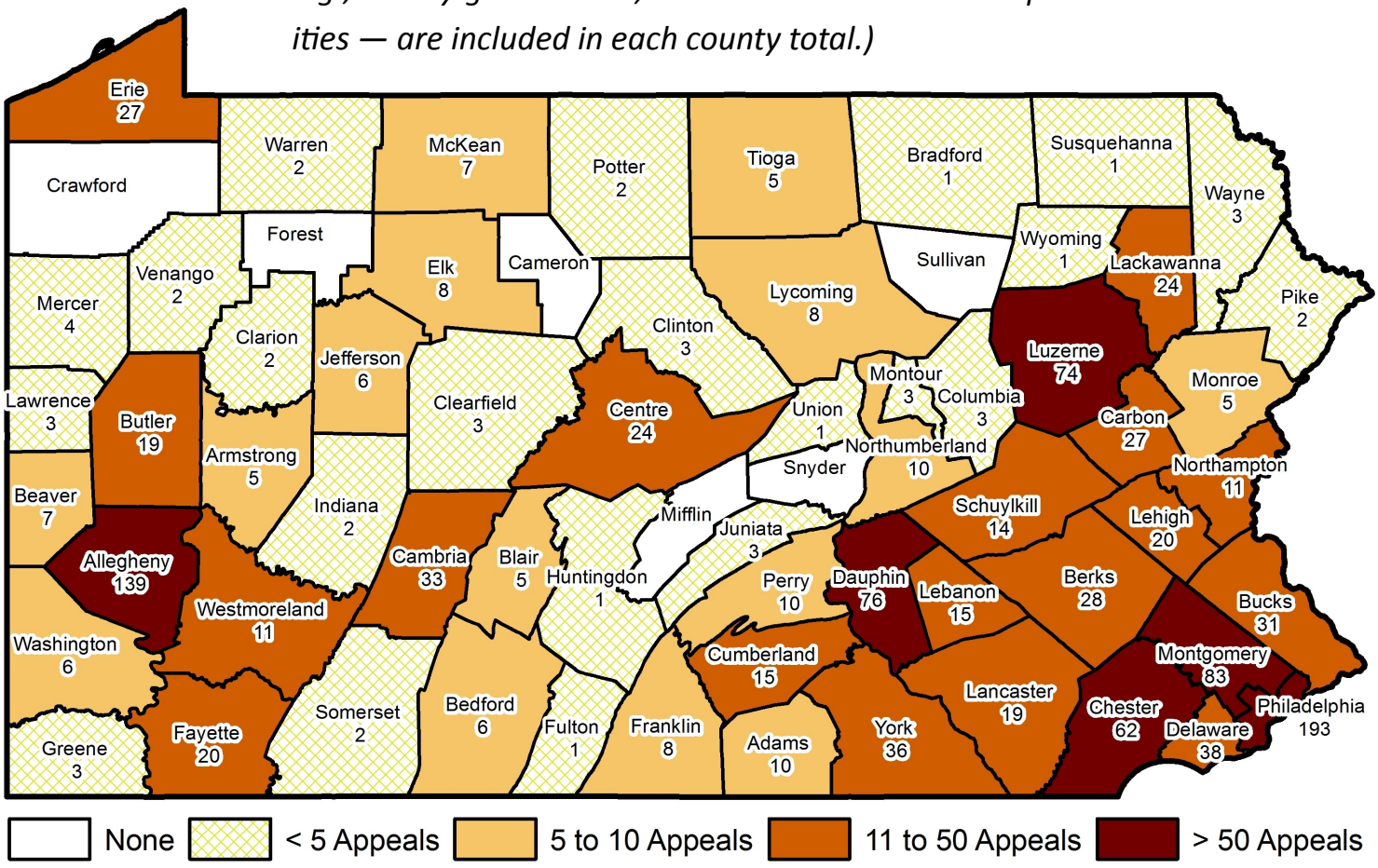


Local Appeals

193

Appeals Involving Agencies in Philadelphia

Philadelphia is the state's most populous county (and city), so it doesn't come as a surprise that Philadelphia agencies were involved in more local appeals than those in any other county. *This map shows the number of non-inmate appeals involving local agencies which were filed with the OOR in 2015. (All local agencies — e.g., county government, school districts and municipalities — are included in each county total.)*

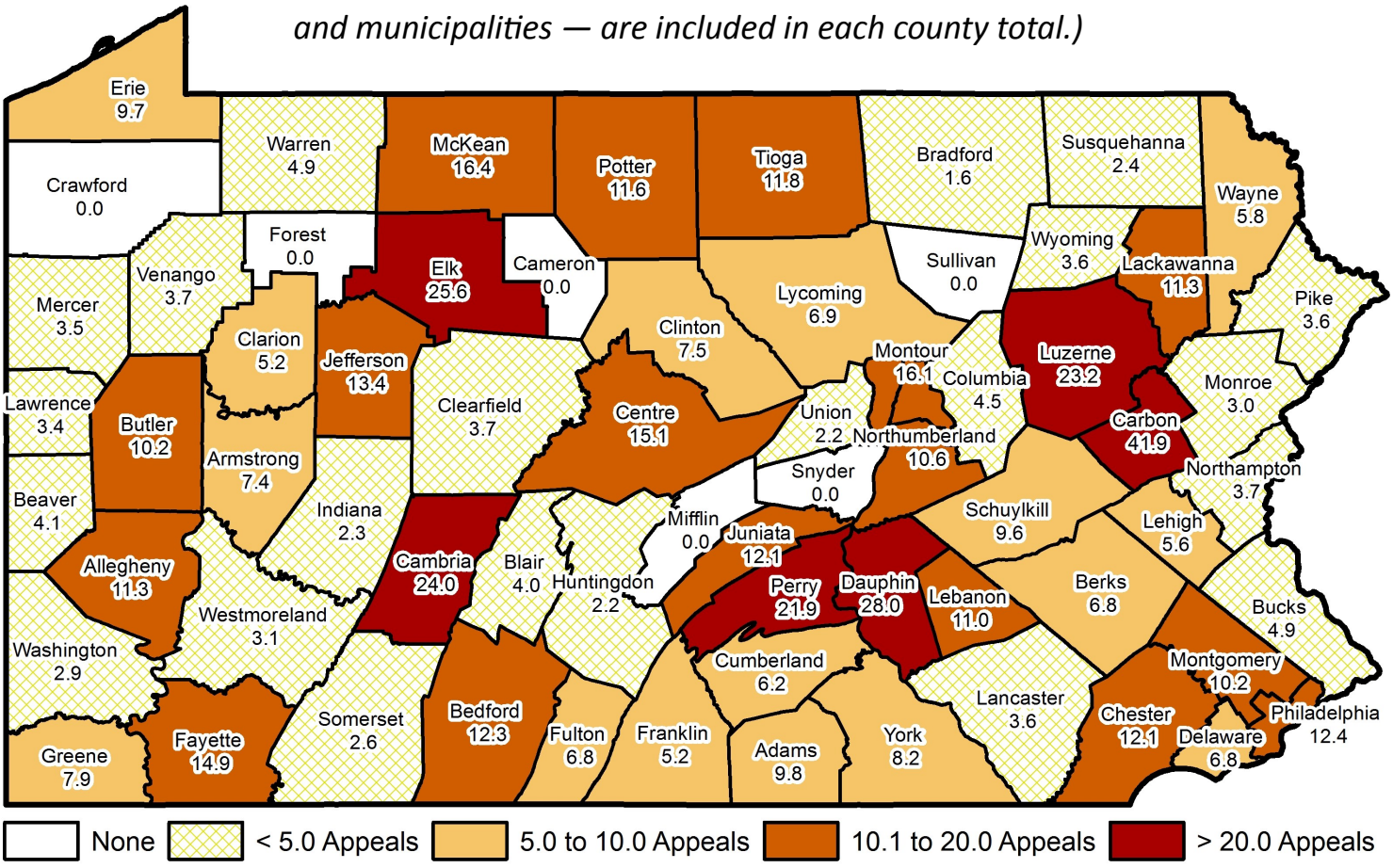


Local Appeals

41.9

Per Capita* Appeals Involving Agencies in Carbon County

It might come as a surprise that Carbon County was at the top of the list in terms of per capita appeals filed in 2015. The top 5 also included Dauphin, Elk, Cambria, and Luzerne counties. *This map shows the number of non-inmate appeals involving local agencies filed with the OOR in 2015 per 100,000 population. (All local agencies — e.g., county government, school districts and municipalities — are included in each county total.)*



** To be precise, per 100,000 population based on 2014 U.S. Census Bureau Population Estimates.*

Access to Records

10

Examples of Records the RTKL Provided Access to in 2015

Here's a sampling of the types of records which the RTKL provided access to in 2015:

1. Information regarding airport perimeter security breaches at Philadelphia International Airport and Northeast Philadelphia Airport.

2. The amount spent on school district solicitor bills and other legal expenses over the course of a fiscal year at numerous school districts.

3. A redacted copy of the Pennsylvania State Police *After Action Report / Improvement Plan* issued following the September 2014 shooting at the Blooming Grove barracks.

4. De-identified information about the waiting lists for service at Norristown State Hospital, Torrance State Hospital, and other regional forensic psychiatric center facilities.

5. Training records for a police officer charged (and later acquitted) in a fatal shooting.

Access to Records

10

Examples of Records the RTKL Provided Access to in 2015

Here's a sampling of the types of records which the RTKL provided access to in 2015 (*continued*):

6. Emails related to discussions about where school crossing guards should be assigned after a girl was killed trying to cross at a busy intersection.

7. The amount paid to settle a federal lawsuit filed by a woman who claimed her son was wrongly killed by a state trooper and, separately, the amounts paid to defend and settle a wrongful termination lawsuit brought by a former public defender.

8. Information revealing that about 10 percent of school employees in a particular district were related to the district's top officials.

9. Emails indicating that local officials were using official email accounts for communication related to local elections.

10. A log of reports of health complaints tracked by the Department of Health in areas of the state seeing natural gas development.

Litigation

5

Top Appellate Court Decisions in 2015

Every year, dozens of RTKL cases are decided by the Supreme Court, Commonwealth Court, and county Courts of Common Pleas. Here are some of the most significant decisions from 2015 (in no particular order).

***Pa. Dep't of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. July 14, 2015)**

When the specificity of a request is at issue, Commonwealth Court uses a three-part balancing test, "examining the extent to which the request sets forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought."

***Pa. Office of Attorney General v. Phila. Inquirer*, 127 A.3d 57 (Pa. Commw. Ct. Nov. 19, 2015)**

The RTKL's definitions of "record" and "public record" were examined. Commonwealth Court held that "[t]he fact that [emails] were sent, received or retained in violation of OAG policy does not transform what was not a public record into a public record under the RTKL. For emails to qualify as records 'of' an agency, we only look to see if the subject-matter of the records relate to the agency's operations."

5

Top Appellate Court Decisions in 2015 (cont.)

***Pa. Dep't of Labor & Industry v. Earley*, 126 A.3d 355 (Pa. Commw. Ct. Sept. 9, 2015)**

Regarding email records, Commonwealth Court held that "When an individual deletes an email from his or her email account … that does not mean that the email is necessarily deleted. Those emails remain on the mail server until they are deleted in accordance with a retention schedule. … [T]o establish that the email records do not exist, the Department must also establish that they no longer exist on the mail server."

***Pa. State Police v. Grove*, 119 A.3d 1102 (Pa. Commw. Ct. July 7, 2015)**

Video recordings made by police car dashcams (a.k.a. mobile video recordings, or MVRs) are not inherently investigative records, although they may include investigative information which needs to be redacted: "The mere fact that a record has some connection to a criminal proceeding does not automatically exempt it under Section 708(b)(16) of the RTKL or CHRIA. … PSP is entitled to redact the portions of MVRs that contain actual investigative information … but may not withhold an entire MVR on the basis that part of it is investigative."

5

Top Appellate Court Decisions in 2015 (cont.)

***Pa. State Police v. Muller*, 124 A.3d 761 (Pa. Commw. Ct. June 30, 2015)**

Reinforcing the need for agencies to provide evidence when a case is before the OOR, Commonwealth Court held that "[a]n agency is not entitled to ignore its burden to show an exemption from disclosure before OOR and rely on supplementation of the record in this Court to avoid the consequences of that conduct."

Although that's five, we would be remiss if we didn't mention the Supreme Court decision in ***Arneson v. Wolf***, 124 A.3d 1225 (Pa. Oct. 27, 2015), which held that the OOR is a "unique and *sui generis* independent body," ensuring that it can operate free from political pressures.

Other significant cases from 2015 — and previous years — are available on the OOR website.

RTK Requests

888

Right-to-Know Requests to the OOR in 2015

In addition to deciding appeals filed under the RTKL, the OOR processes hundreds of RTK requests every year. In 2015, a total of 888 RTK requests were filed with the OOR.

Most requests filed with the OOR are misdirected: The requester isn't really seeking OOR records; rather, they want records from another agency but mistakenly file the request with the OOR.

In 2015, about 87% of RTK requests filed with the OOR were misdirected. However, the OOR responds to every request; for misdirected requests, we try to point the requester to the agency most likely to have the records at issue.

115 RTK requests were made for OOR records in 2015. These were typically for copies of Final Determinations, case files, salary information, OOR forms, and the OOR's procedural guidelines.

Online

1

New Website Unveiled by the OOR in 2015…
Plus 1 New Blog, 1 New Podcast & 2 New Twitter Accounts…

The OOR's original website, created in 2008, was still being used until late 2015. We rebuilt the website and added new resources to allow requesters and agencies to quickly find what they need. Improvements are on-going.

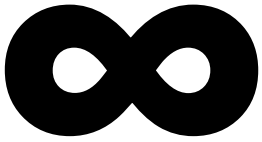
In 2015, the OOR also started a blog, a podcast, and two Twitter accounts.

The Open Records in Pennsylvania blog, available at openrecordspa.wordpress.com, featured 38 blog posts, 2,458 visitors, and 5,437 pageviews. The first post was made on June 25.

The Open Records in Pennsylvania podcast, available free on iTunes, debuted on Aug. 9. Three episodes were produced in 2015; they were downloaded a total of 945 times (averaging 315 downloads per episode).

The OOR's two Twitter accounts, @OpenRecordsPA and @ErikOpenRecords, have been used to announce new online resources and upcoming training sessions, to discuss important court decisions, to answer questions, and more.

The Future



Issues Emerging in 2016 and Beyond

The OOR has been fully operational for more than 7 years. Surely, just about every RTKL issue has been decided by this point. Right? Wrong.

It feels like the OOR faces a novel issue every day, and there's no reason to expect that to change. As appeals grow more complicated and nuanced, here are some issues the OOR is likely to face in the near future:

- Amendments to the RTKL.
- Promulgating regulations under the RTKL.
- An increase in Sunshine Act inquiries.
- Video records from government drones.
- Video records from other sources.
- Metadata in electronic records.
- Social media records.

Whatever the future holds for the RTKL, the Sunshine Act, and other government transparency issues, the OOR will be prepared.