



pennsylvania

OFFICE OF OPEN RECORDS

2021 ANNUAL REPORT

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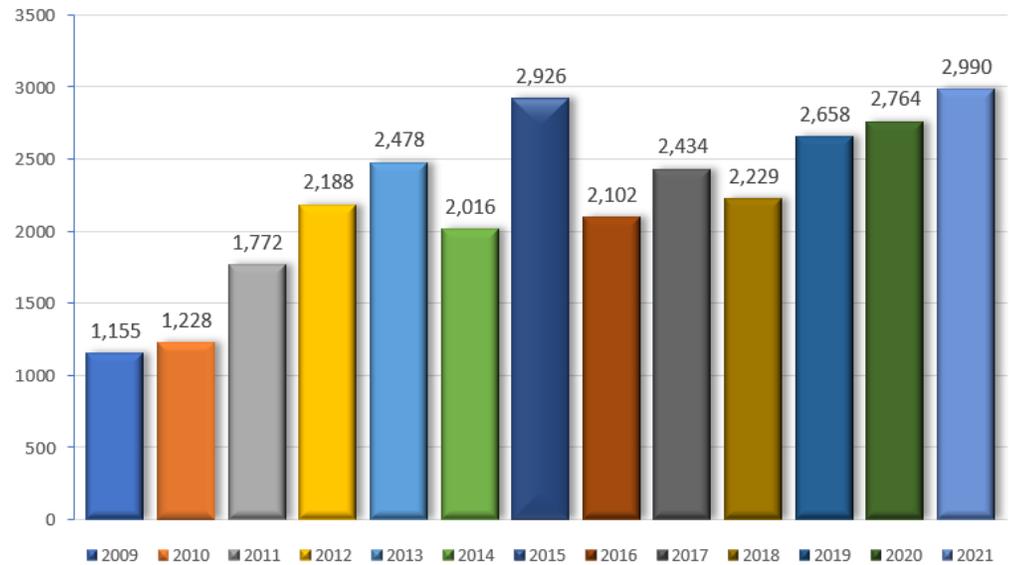
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2,990 APPEALS FILED

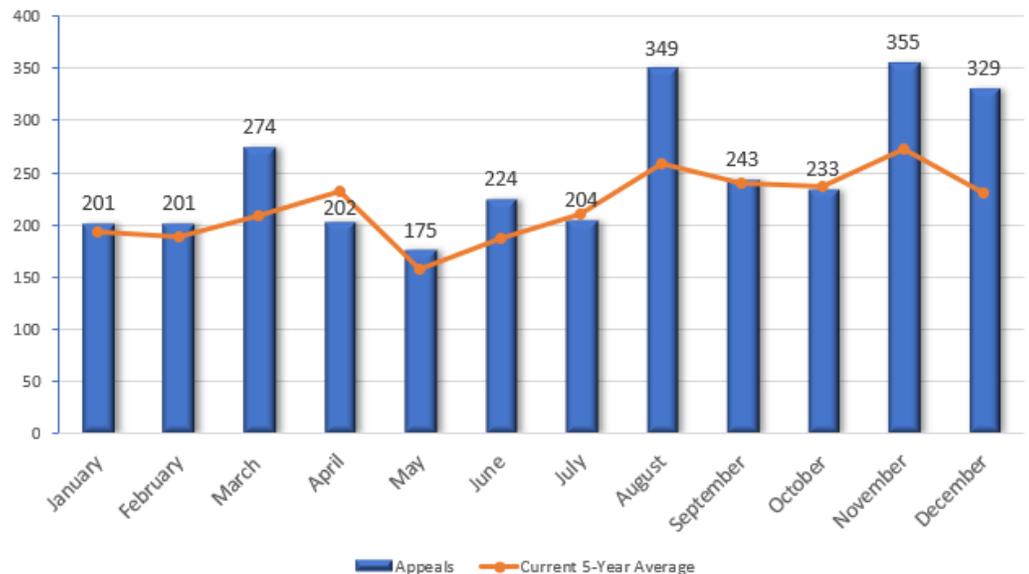
2021 ranks as the busiest year ever for the Office of Open Records. The issues to be decided on appeal continue to grow in both volume and complexity. The current three-year average is 2,804 appeals; the current five-year average is 2,615.



APPEAL HISTORY

August and November 2021 were two of the busiest months of all time. The top six months are:

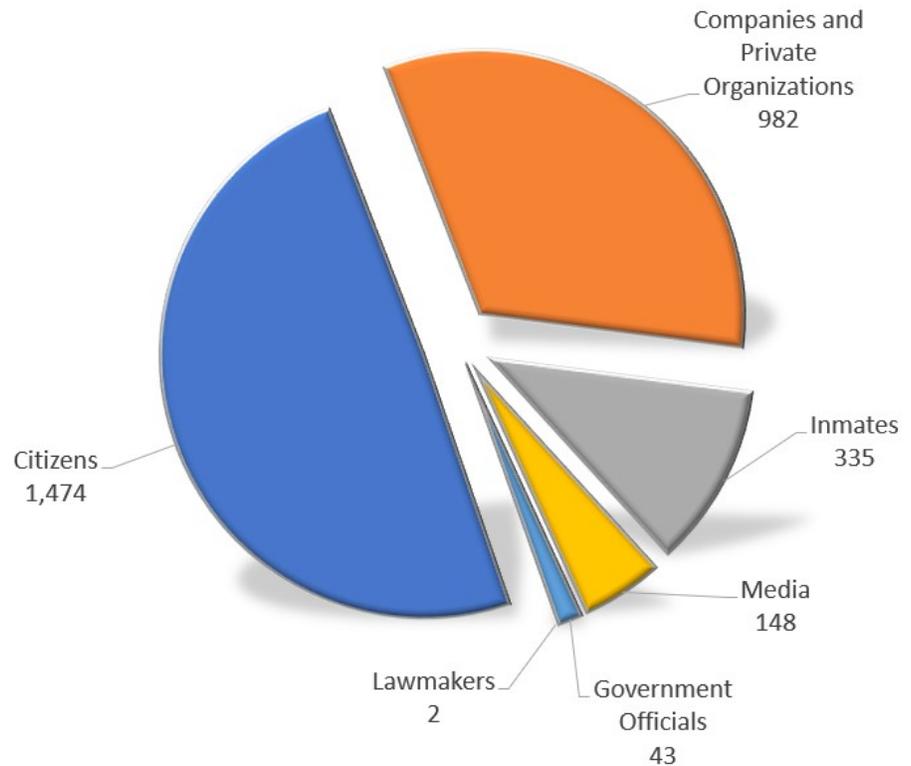
- 391 in August 2017
- 376 in August 2020
- 355 in November 2021
- 353 in October 2015
- 349 in August 2021
- 345 in August 2015



1,474 CITIZEN APPEALS

Nearly half (49.4%) of the appeals docketed by the OOR in 2021 were filed by everyday citizens. They were followed by:

- Companies and Private Organizations, 32.9%
- Inmates, 11.2%
- Media, 5.0%
- Government officials, 1.4%
- Lawmakers, 0.1%

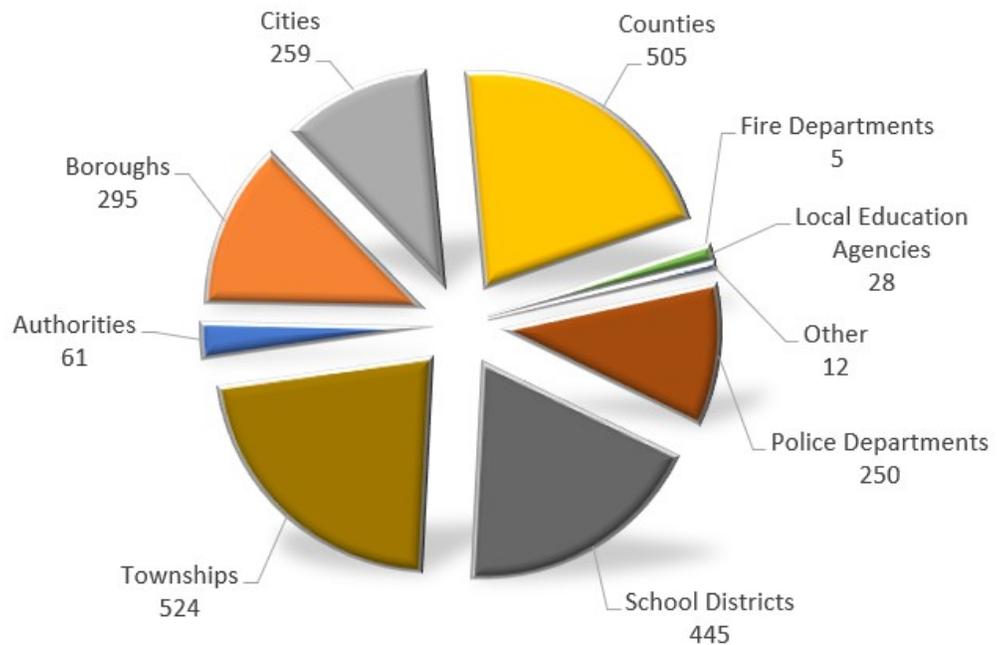


Six appeals were filed by a non-U.S. resident, who cannot be requesters under the RTKL. Those appeals are not included in the pie chart above.

2,384 APPEALS INVOLVING LOCAL AGENCIES

In 2021, municipalities (cities, boroughs, and townships) were involved in 45.2% of appeals filed against local agencies. Here's the complete list:

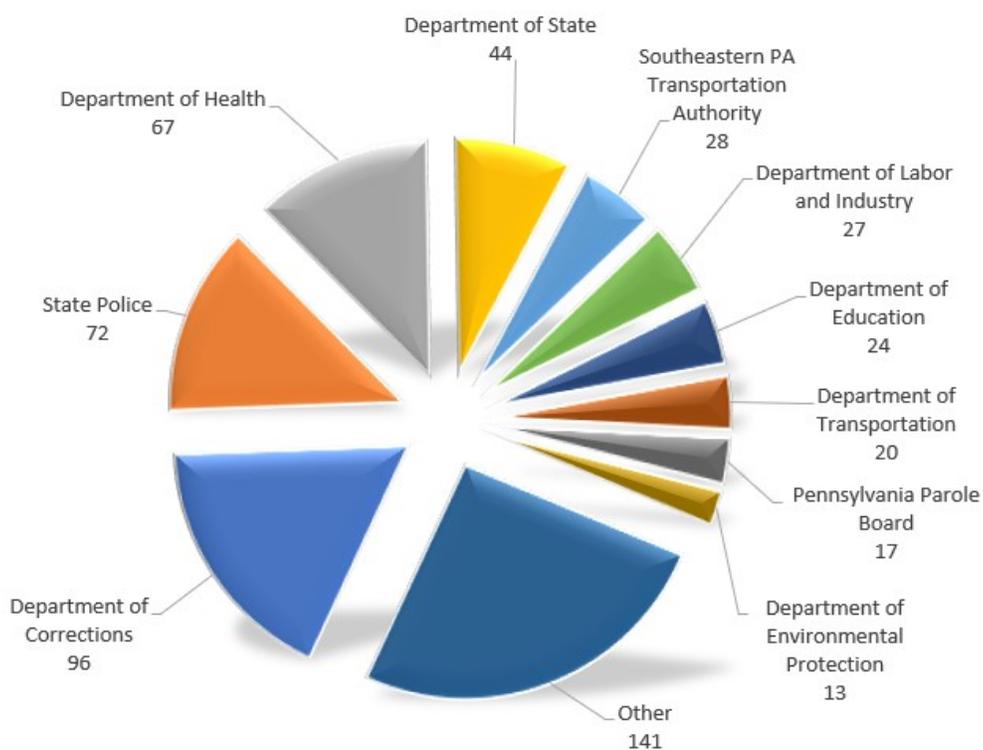
- Townships, 22.0%
- Counties, 21.2%
- School Districts, 18.7%
- Boroughs, 12.4%
- Cities, 10.8%
- Police Departments, 10.5%
- Authorities, 2.5%
- Local Education Agencies, 1.2%
- Other, 0.5%
- Fire Departments, 0.2%



549 APPEALS INVOLVING STATE AGENCIES

In 2021, the Department of Corrections was involved in more appeals than any other state agency. Here's the full list:

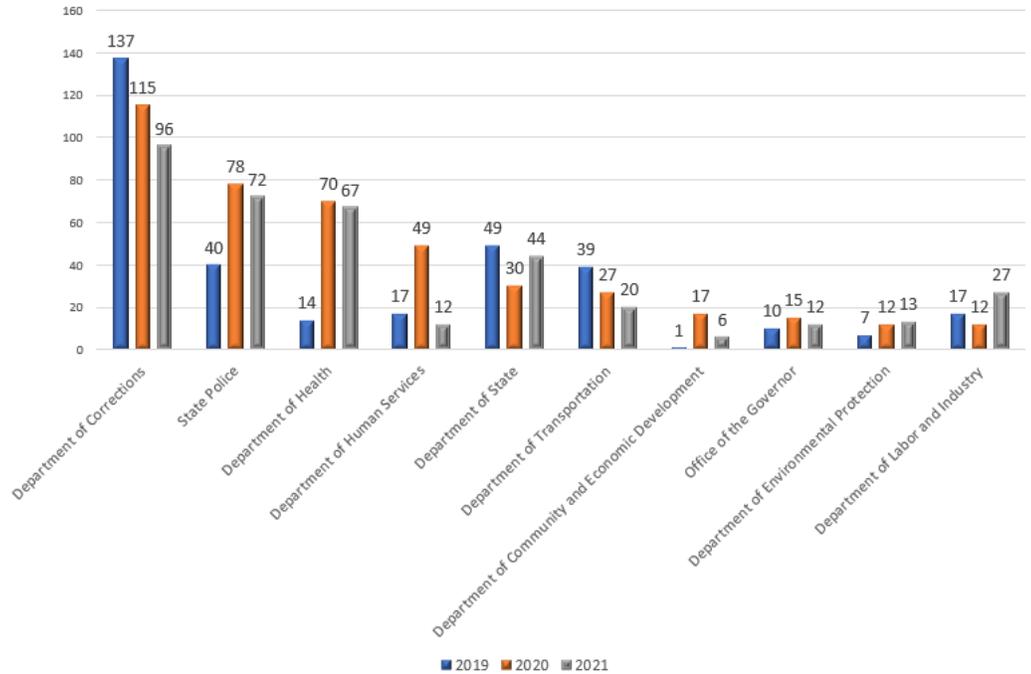
- Department of Corrections, 17.5%
- State Police, 13.1%
- Department of Health, 12.2%
- Department of State, 8.0%
- Southeastern Pennsylvania Transportation Authority, 5.1%
- Department of Labor & Industry, 4.9%
- Department of Education, 4.4%
- Department of Transportation, 3.6%
- Department Parole Board, 3.1%
- Department of Environmental Protection, 2.4%
- Other, 25.7%



The number of appeals involving local agencies on the previous page (2,384) and the number involving state agencies on this page (549 do not add up to the total of 2,990 appeals listed earlier in this report). The “missing” 57 appeals were filed against judicial agencies, legislative agencies (both of which the OOR has no jurisdiction over), and entities which are not agencies.

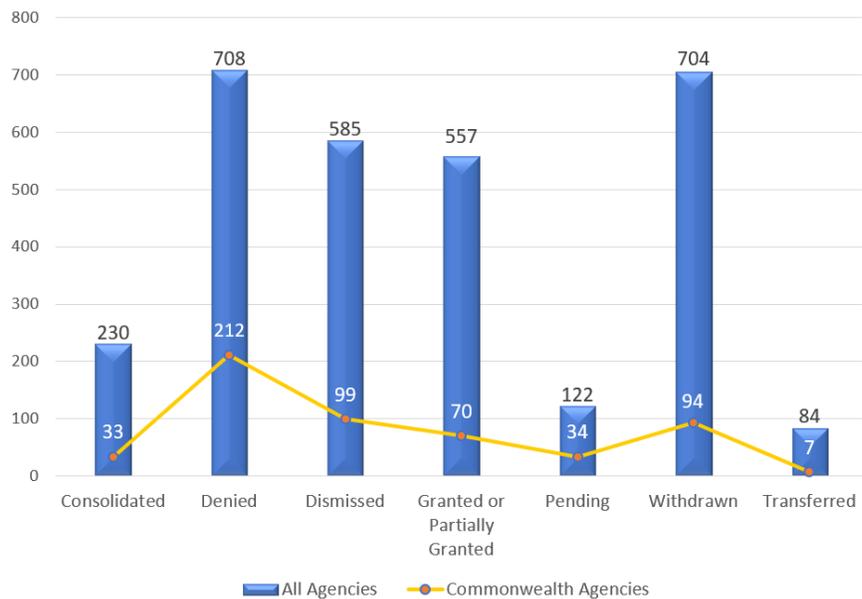
INCREASE AND DECREASE OF STATE AGENCIES

In 2021, several agencies saw noticeable increases and decreases of appeals filed compared to 2019 and 2020.



BREAKDOWN OF STATE AGENCIES

Requesters obtain access to records when appeals are granted or withdrawn (only the requester can withdraw an appeal). In 2021, 30% of appeals involving state agencies were granted, partially granted, or withdrawn while 38% 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 2021:

- Noncriminal Investigative Records, (b)(17), 76
- Criminal Investigative Records, (b)(16), 57
- Internal, Predecisional Deliberations, (b)(10), 44
- Personal Identification Information, (b)(6), 37
- Agency Employee Information, (b)(7), 31
- Personal Security, (b)(1), 29
- Individual Medical Records, (b)(5), 28
- Public Safety, (b)(2), 23
- 911 Records, (b)(18), 11
- Building, Infrastructure and Utility Safety, (b)(3), 9
- Trade Secret / Confidential Proprietary Information, (b)(11), 8
- Minor's Name, Home Address, Birth Date, (b)(30), 7

The OOR's Appeals Officers also heard hundreds of cases in which the agency asserted that the requested records did not exist (222), the request was not specific or asked questions rather than seeking records (93), the requested records weren't in the possession of the agency or were not records of the agency (85), the records are exempt under another State law (37), information was protected by the State constitution's right to privacy (35), or the request sought records protected by attorney-client privilege (31).

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 2021

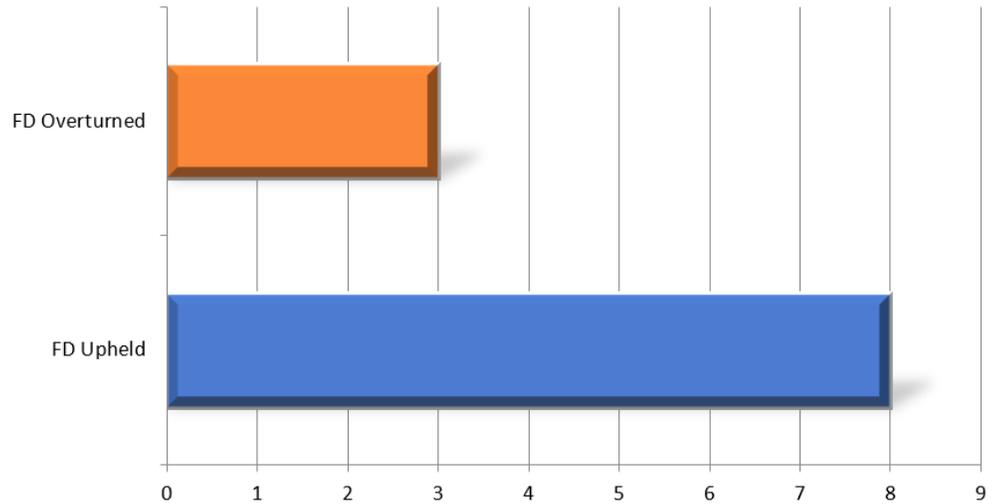
The goal of the RTKL is to make government records available to the public. These records can then be used to hold public officials accountable for their actions.

Here are some of the records accessed via the RTKL in 2021:

- 1) The total amount — \$33 million — that IBM paid Pennsylvania to settle a lawsuit over the corporation's failed performance in its overhaul of the unemployment computer system.
- 2) An internal PA Turnpike report that revealed that \$104 million dollars of tolls went uncollected as the agency switched to all-electronic tolling.
- 3) Internal communications between Department of Labor officials after it was discovered that the agency overcharged unemployed Pennsylvanians millions of dollars.
- 4) A letter sent by Berks County commissioners in support of U.S. Immigration and Customs Enforcement's plans to utilize a county facility as a detention center for immigrants.
- 5) Texts between Fulton County officials regarding a review of the 2020 election.
- 6) Records regarding the termination of two Lancaster City Police officers for submitting forged COVID-19 vaccination forms.
- 7) Communications of the Department of Health demonstrated confusion over federal rules regarding addiction treatment programs and medical marijuana, leading to the denial of treatment for Pennsylvanians struggling with addiction.
- 8) Documentation that Philadelphia transferred \$5 million in foster children's Social Security benefits to the city's general fund.
- 9) Communications showed Pennsylvania housing officials' raising of alarms and pleas for help before the state failed to use \$96 million out of \$150 million coronavirus relief housing money.
- 10) Inspection reports revealed the identification of 229 smoke detector violations at Pennsylvania child care facilities over a 19-month period.

86 PETITIONS FOR RECONSIDERATION

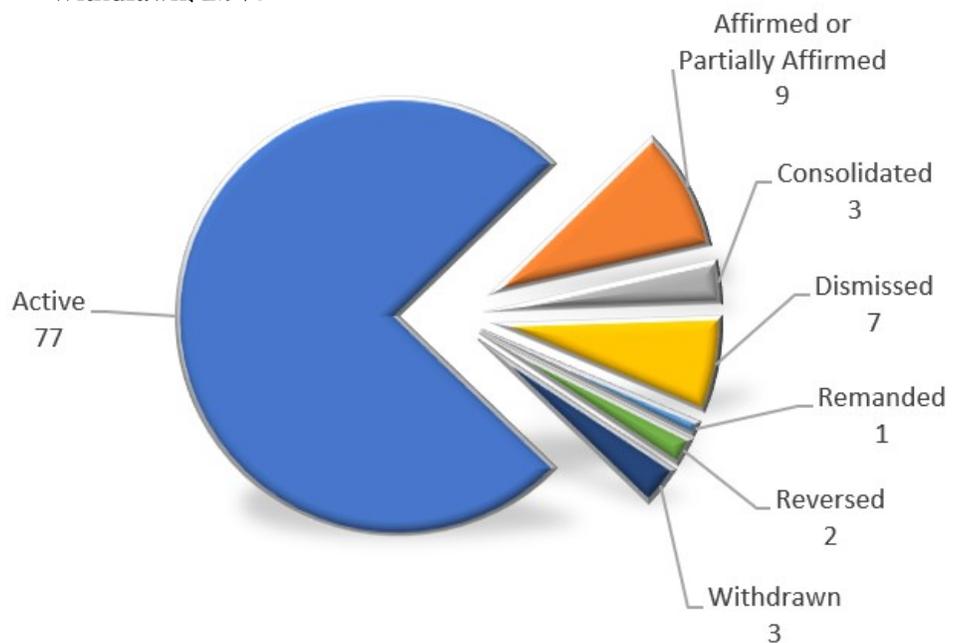
In 2021, requesters filed 74 (86%) requests to reconsider a Final Determination and agencies filed 12 (14%). The OOR granted 11 Petitions for Reconsideration, meaning a Final Determination Upon Reconsideration would be issued. Those results are:



102 APPELLATE COURT FILINGS

The OOR continues to monitor 75.5% of the 2021 appellate filings before the Court of Common Pleas and Commonwealth Court. However, 24.5% have already been decided. A breakdown of the courts decision are as follows:

- Affirmed, or Partially Affirmed, 8.8%
- Consolidated, 2.9%
- Dismissed, 6.9%
- Remanded, 1.0%
- Reversed, 2.0%
- Withdrawn, 2.9%



2021

Accomplishments

Here are some of OOR's accomplishments in 2021:

1. Issued 2,913 decisions, the highest number in our 13 years of existence and 35 percent increase in five years.
2. Conducted 75 training sessions, including a weekly virtual training session, reaching 3,528 participants.
3. Released the inaugural [Agency Website Review report](#) after analyzing 135 agency websites for RTKL compliance and finding just 50 percent in full compliance with the law.
4. Submitted a [draft of the proposed OOR Regulations](#) to the Office of Attorney General for review.
5. [Testified](#) at a [hearing](#) before the House State Government Committee regarding how the COVID-19 pandemic impacted Right-to-Know Law requests.
6. Provided guidance to hundreds of inquiries regarding two major Sunshine Act developments: a law requiring that an agenda must be posted 24 hours before a public meeting, and the impact of the end of the governor's emergency declaration on the legality of holding remote meetings.
7. Affirmed by the Commonwealth Court in finding that PIAA is a government agency and subject to the RTKL.
8. Posted on our website any records granted via RTKL by the OOR, allowing instant access.
9. Revamped our mediation practice, resulting in the elimination of a backlog of outstanding cases and providing a quicker resolution for the parties involved.
10. Overturned government agencies' denial of records that led to significant media reports regarding:
 - medical marijuana permits,
 - plans for an immigration detention facility, and
 - a forensic audit of a fire company beset by internal fund misappropriation.

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MEDIATIONS

The OOR's mediation 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

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TRAINING SESSIONS

The OOR is statutorily required to provide training sessions about the RTKL and the Sunshine Act.

Our complete training schedule can be found at:

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

Image below courtesy of the Pennsylvania State Archives.



1,295 RIGHT-TO- KNOW REQUESTS

The OOR set another record in 2021, 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.

93% 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, Annual Training questions, and OOR forms.

22 OOR EMPLOYEES

Pennsylvania is immeasurably benefited by its Office of Open Records. With after one year as Executive Director, I directly observed the ways the agency is a critical tool for providing transparency and holding governments accountable.

The increased demand for public records that began in the wake of the commencement of the pandemic shows no sign of abating. Citizens are keeping a closer eye on how all levels of public government are acting and are often unwilling to accept an agency's public remarks as the final answer. Based on the record-breaking number of appeals our office decided, the Right-to-Know Law appears to now have a permanent place in the toolbox for active citizens.

The success of the OOR is the result of the hard working, dedicated, and intelligent staff. Despite crushing workloads and increasingly complex legal issues, each and everyone of the 21 team members rise to the occasion and deliver for the people of Pennsylvanians. My gratitude is deep for the entire team: plays a vital role in OOR's success: Kyle Applegate, Kerianne Baker, Erin Burlew, Nathan Byerly, Jordan Davis, Dylan Devenyi, Angie Edris, Blake Eilers, Matthew Eisenberg, Lyle Hartranft, Faith Henry, Katie Higgins, Kelly Isenberg, Michele Kusery-Grant, Ryan Liggitt, Erika Similo, Janelle Sostar, George Spiess, Ian Spiess, Joshua Young, and Magdalene Zeppos-Brown.

Liz Wagenseller
March 14, 2022