



**pennsylvania**

OFFICE OF OPEN RECORDS

Erik Arneson, Executive Director

## **OOR Annual Training**

*November 18, 2020*

<https://openrecords.pa.gov>

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To submit questions to the panel: Use the Zoom chat tool or email [RA-DCOORTRAINING@pa.gov](mailto:RA-DCOORTRAINING@pa.gov)

# Introduction

## Welcome to the Office of Open Records Annual Training

- Thank you for joining us via Zoom
- We are recording this discussion and plan to post it to YouTube
- To submit questions to the panel:
  - Use the Zoom chat tool; or
  - Email [RA-DCOORTraining@pa.gov](mailto:RA-DCOORTraining@pa.gov)
  - We will answer as many as possible – if we don't get to yours, email [openrecords@pa.gov](mailto:openrecords@pa.gov) after this discussion ends
- Unfortunately, CLEs are not available this year

# Introduction

## Welcome to the Office of Open Records Annual Training

- RTKL went into effect on Jan. 1, 2009
- Since that time, nothing even close to the pandemic
  - Some localized, short-term emergencies
- OOR worked to provide clear advisories to help agencies & requesters navigate the new challenges
- Overall, agencies & requesters responded very well
  - Some challenges continue even today

# OOR Surveys: Pandemic, RTKL & Sunshine Act

## The OOR recently conducted 2 surveys

- Both focused on how the pandemic affected administration of the Right-to-Know Law and Sunshine Act
- One was for AOROs; the other for requesters
  - 377 responses to AORO survey
  - 26 responses to requester survey
- The full results will be available at the OOR blog:
  - <https://openrecordspennsylvania.com>

# OOR Surveys: Pandemic, RTKL & Sunshine Act

## AORO survey – 377 responses

- Townships, 37.4%
- School Districts, 19.4%
- Boroughs, 17.8%
- Commonwealth Agencies, 4.0%
  - Includes a joint submission from agencies under Gov's control
- Others, 21.4%
  - Includes charter schools, police departments, authorities & more

# **OOOR Surveys: Pandemic, RTKL & Sunshine Act**

**AOROs – During the COVID-19 emergency, has your agency seen a change in the volume of requests you have received?**

- Large increase: 5.1%
- Small increase: 12.0%
- No change: 66.9%
- Small decrease: 13.6%
- Large decrease: 2.4%

# **OOR Surveys: Pandemic, RTKL & Sunshine Act**

**AOROs – During the COVID-19 emergency, has it become harder to fulfill RTKL requests your agency has received?**

- Significantly harder: 6.4%
- Somewhat harder: 28.5%
- No change: 65.2%
- Easier: 0.0%

# **OOR Surveys: Pandemic, RTKL & Sunshine Act**

**AOROs – During the COVID-19 emergency, in general, have you provided responses to RTKL requests:**

- Much more quickly: 0.0%
- More quickly: 1.1%
- About the same: 81.7%
- Less quickly: 12.5%
- Much less quickly: 4.8%



# OOR Surveys: Pandemic, RTKL & Sunshine Act

## Other highlights from the AORO survey:

- 68.2% never changed RTKL procedures
- 4.8% have seen more RTKL appeals during the emergency
  - 5.3% have experienced difficulty participating in an appeal
- 69.7% have used Zoom (or similar) to host public meetings
  - 54.3% have held meetings indoors (reduced capacity)
  - 19.7% used tele-conference
  - 7.3% held meetings outdoors

# OOR Surveys: Pandemic, RTKL & Sunshine Act

## Requester survey – 26 responses

- Citizens, 57.7%
- Media, 26.9%
- Other, 15.4%
  - Includes commercial, government official & others

# **OOR Surveys: Pandemic, RTKL & Sunshine Act**

**Requesters – During the COVID-19 emergency, in general, have you received responses to RTKL requests, compared to before the emergency:**

- Much more quickly: 0.0%
- More quickly: 0.0%
- About the same: 23.1%
- Less quickly: 42.3%
- Much less quickly: 34.6%

# OOOR Surveys: Pandemic, RTKL & Sunshine Act

**Requesters – Since all counties entered the green phase in May, how often have you received a **timely initial response to your requests?****

- Much more often: 0.0%
- More often: 4.0%
- About as often: 56.0%
- Less often: 24.0%
- Much less often: 16.0%

# **OOOR Surveys: Pandemic, RTKL & Sunshine Act**

**Requesters – During the COVID-19 emergency, have you submitted more appeals or fewer appeals arising from your RTKL requests?**

- Many more: 12.5%
- More: 25.0%
- About as many: 54.2%
- Fewer: 4.2%
- Many fewer: 4.2%

# **OOR Surveys: Pandemic, RTKL & Sunshine Act**

**Requesters – If you have sought to attend, view, or listen to a public meeting during the COVID-19 emergency, have you encountered issues that prevented you from doing so satisfactorily?**

- Yes, more than once: 48.0%
- Yes, once: 16.0%
- No: 12.0%
- I have not tried to attend: 24.0%

# **OOOR Surveys: Pandemic, RTKL & Sunshine Act**

## **Other highlights from the requester survey:**

- 43.5% encountered issues trying to comment at a public mtg
- 17.4% felt safety measures at a public mtg were insufficient
- 29.2% encountered issues communicating with OOR AOs
- 55.6% submitted public comments via email
  - 38.9% participated via video conference
  - 33.3% called in
  - 22.2% participated in person



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Nathan Byerly, Deputy Director

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# Remembering Basics

- RTKL is a statutory duty
  - Trust through accountability – important especially in crises
  - Continuity of Operations/Government Plans or disaster declaration responses should include how to respond to RTKL requests and appeals
- Communication
  - Agency should work with Requester to fulfill requests as able
  - Requester should be patient with hurdles faced by agencies
    - If no immediate need for records, consider postponing requests
- Mutual consideration
  - Common sense and common courtesy

# OOR Advisories

- Paralleled Governor's disaster declaration
- Purpose:
  - Minimize confusion
  - Minimize any negative impact on requesters and agencies
  - Maximize due process rights of all parties
    - Full and fair opportunity to participate before the OOR
    - Requester
    - Agency
    - Third parties
  - Maintain safety of the public and agency employees

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# Red Phase

- Request Level
  - If an agency was closed on a given day, it is not considered a “business day” and not counted toward the 5 business days in Section 901
  - Upon advice of counsel, some agencies invoked 35 Pa.C.S. § 7501(d), suspending the need to comply with certain laws and requirements
- Appeal Level
  - The OOR initially invoked an indefinite extension on appeals and then worked through procedural issues on a case-by-case basis
  - In late April, the OOR invoked 30-day extensions on appeals again working through procedural issues on a case-by-case basis

# Yellow/Green Phase

- Agencies should be processing RTKL requests as they would under normal circumstances.
- Act 77
  - Became law in July
  - Applies to Commonwealth agencies only
  - OOR developed guidelines
  - Other agencies may benefit from reviewing and applying OOR's Act 77 guidelines (which include, for example, important information about employee safety during an emergency declaration) to the greatest extent possible, in similar situations

# Looking ahead.....

- Advisories may be updated in the future
  - Check the OOR webpage regularly – we are monitoring the situation
  - Carefully review the packet sent to parties in every OOR appeal
  - Work with your solicitor or agency counsel – keep them updated
- Communicate with Requester(s) and OOR

# OOOR Resources

## Website, Twitter, Email Lists & More

- Web: <https://openrecords.pa.gov>
- Blog: <https://openrecordspennsylvania.com>
- Email lists: Daily Digest of FDs & General Updates
  - <https://www.openrecords.pa.gov/EmailSubscriptions.cfm>
- Twitter: [@OpenRecordsPA](#)
  - Executive Director: [@ErikOpenRecords](#)
- [YouTube Channel](#)