

August 19, 2022

Melissa Bevan Melewsky
In-house Counsel
Pennsylvania NewsMedia Association
melissam@pa-news.org

RE: Advisory Opinion on agency policies limiting RTKL requests

Dear Attorney Melewsky:

The Office of Open Records (“OOR”) received your request for an advisory opinion on August 12, 2022. The OOR may issue advisory opinions pursuant to Section 1310 of the Right-to-Know Law (“RTKL”), 65 P.S. § 67.1310(a)(2). Your request for an advisory opinion is hereby **GRANTED**.

Your advisory opinion request seeks answers to the following questions:

- 1. Can an agency enact a policy that limits the number of Right-to-Know Law requests that can be filed with the agency?**
- 2. Does a local policy limiting the number of Right-to-Know Law requests that can be filed violate Section 1308 of the statute, 65 P.S. § 67.1308?**

Both questions are interrelated and can be answered together. Section 1308 of the RTKL prohibits agencies from adopting “[a] policy or regulation” that includes “[a] limitation on the number of records which may be requested or made available for inspection or duplication.” 65 P.S. § 67.1308. The Commonwealth Court has recognized that this prohibition means that an agency is not “excused from its obligation[s]” under the RTKL “[j]ust because a request is for a large number of documents.” *Pa. State Sys. Of Higher Educ. v. Ass’n of State College & Univ. Faculties*, 142 A.3d 1023 (Pa. Commw. Ct. 2016).

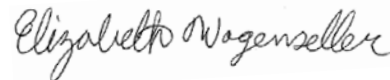
While Section 1308 prohibits an agency from limiting the number of *records requested* in a single request, it also follows that Section 1308 prohibits an agency from limiting the number of *record requests* that can be made. The RTKL “is remedial legislation designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions....” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw Ct. 2010), *affirmed by* 75 A.3d 453 (Pa. 2013). Due to this reason, Section 1308 should be read in a manner to maximize access to government records. Notwithstanding policy reasons, however, Section 1308 clearly prohibits an agency from prohibiting the number of records requested, as well as the number of requests made: any limitation on the number of record requests that may be made is necessarily a prohibition on the number of records requested. We are to presume that the General Assembly did not intend for an absurd or unreasonable result. 1 Pa.C.S. § 1922(1).

Section 1308 prohibits agencies from enacting policies limiting the number of records requested as well as the number of record requests. Because of the clear statutory prohibition against such a policy, it is unnecessary to evaluate any constitutional concerns.

Finally, OOR notes that any agency that promulgates a policy in violation of Section 1308 of the RTKL may be subject to court costs, attorney fees, and civil penalties. 65 P.S. §§ 67.1304-1305. The scope of those penalties would be determined by a court of competent jurisdiction.

Thank you for contacting the OOR with your request. A copy of this Advisory Opinion will be placed on the OOR website at <https://www.openrecords.pa.gov/RTKL/AdvisoryOpinions.cfm>.

Respectfully,

A handwritten signature in cursive script that reads "Elizabeth Wagenseller". The signature is written in black ink on a white background.

Elizabeth Wagenseller
Executive Director



August 12, 2022

Elizabeth Wagenseller
Executive Director
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: Advisory Opinion on agency policies limiting RTKL requests

Dear Ms. Wagenseller,

I am in-house counsel with the Pennsylvania NewsMedia Association (PNA), the statewide trade association representing 300 print and digital news organizations in the Commonwealth. I am reaching out on behalf of news organizations and journalists working on their behalf to request an advisory opinion from the Office of Open Records on an issue central to the media's ability to gather information under the Right-to-Know Law and report on the workings of our government.

[News coverage](#) and outreach from our members have made clear that some local agencies have enacted, or plan to enact, policies limiting the number of Right-to-Know Law requests that can be filed with an agency. One such policy was enacted by Charleroi Borough, with the policy allowing local officials to deny requests arbitrarily on a case-by-case basis, without regard to an applicable standard of law and in conflict with the Right-to-Know Law.

We believe local policies that place a limit on the number of requests under the Right-to-Know Law would be in direct conflict with the plain text of the statute. We also believe such a policy would create significant issues for journalists across the Commonwealth who routinely file open records requests as part of their First Amendment newsgathering and reporting functions. We also believe such a policy would negatively impact the public as it would directly conflict with generally applicable statewide law and create a patchwork of disparate access policies across the state.

We are not aware of any pending legal challenges on this issue before the Office of Open Records or a court of law.

Therefore, PNA respectfully requests that the OOR issue an advisory opinion on the following questions of law:

1. Can an agency enact a policy that limits the number of Right-to-Know Law requests that can be filed with the agency?
2. Does a local policy limiting the number of Right-to-Know Law requests that can be filed violate Section 1308 of the statute, 65 P.S. § 67.1308?

We would appreciate the Office of Open Records weighing in on this issue to make the requirements and limitations of the Right-to-Know Law clear to agencies and requesters alike so that public access law remains uniform and consistent across the Commonwealth.

I can be contacted at melissam@pa-news.org or (717) 703-3048, and I thank you for your time and consideration of this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Bevan Melewsky". The signature is written in black ink and is positioned below the word "Sincerely,".

Melissa Bevan Melewsky
In-house Counsel
Pennsylvania NewsMedia Association

CC: Brad Simpson, President PNA

DC, OpenRecords

From: Melissa Melewsky <melissam@pa-news.org>
Sent: Friday, August 12, 2022 3:30 PM
To: DC, OpenRecords
Cc: Brad Simpson
Subject: [External] Request for Advisory Opinion
Attachments: OOR Advisory Opinion - Limit on RTKL Requests.pdf

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Please find attached, a request by the Pennsylvania NewsMedia Association for the issuance of an Advisory Opinion. I am happy to chat if you have any questions or concerns.

Thank you and have a nice weekend,
Melissa

Melissa Bevan Melewsky | Media Law Counsel | PA NewsMedia Association | 717.703.3048 (office) 717.903.4782 (cell)