

THE PENNSYLVANIA RIGHT-TO-KNOW LAW AS APPLIED BY PUBLIC  
SCHOOL DISTRICTS: A MIXED METHODS ANALYSIS

by

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The Pennsylvania Right-To-Know Law as Applied by Public School Districts: A Mixed  
Methods Analysis

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## ABSTRACT

Pennsylvania revised its Right-To-Know Law (RTKL) significantly in 2009. The intent of the law was to increase transparency and create accountability for public agencies. Included in the law was shifting the burden of proving whether a record is public on the agency, not on the citizen. The RTKL created a state oversight agency, the Office of Open Records (OOR). The law also mandated that each public agency appoint a person to be responsible for the release of public records, an Open Records Officer (ORO). The purpose of this study was to describe how public school districts in Pennsylvania have applied the RTKL since its enactment and whether the size of the district affected implementation. This study used a mixed method approach to determine how compliant school districts are to the RTKL by analyzing district websites. Also analyzed, was the final determination database of the OOR to better understand what types of record requests have been in dispute. Finally, a survey was performed of school district ORO to understand what issues have been most prevalent with the RTKL and what recommendations can be made to improve the law. This study revealed that there are many issues with the RTKL. The OOR is an underfunded and understaffed state agency with no enforcement power. School districts, no matter the size, struggle to implement the mandates of the RTKL in terms of compliance, funding, and/or the intricacies of the law. Allowing the OOR to offer binding final determinations would bring clarity to the RTKL. Other recommendations for school districts include designating the business manager as the Open Records Officer in order to receive consistent, annual trainings on the RTKL, as well as require informational trainings for the public before a record can be requested.

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## Chapter One

### **Statement of the Problem**

In November, 2011, a child abuse scandal erupted at Pennsylvania State University (Penn State). Jerry Sandusky, former assistant football coach, was charged with child abuse. Penn State administration and others involved were brought into question as to how much they knew and when they found out about the situation. Record requests were made immediately to Penn State seeking administrative emails and other documents in regards to the case. It has long been an assumption that Penn State was a state university funded by state money. However, this is not the case and the scandal quickly put Pennsylvania's open records law in the national spotlight. Record requesters soon discovered that Penn State was considered a state-related institution and not a state-owned institution, thus allowing the university to be exempt from many open record requests. Penn State commissioned former FBI Director Louis Freeh to conduct an investigation into the child abuse scandal at the university. Freeh (2012, p.16) found that "in order to avoid the consequences of bad publicity, the most powerful leaders at the University repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University Board of Trustees, the Penn State community, and the public at large." These same stakeholders were unable to view correspondence between university leaders because of exemptions in the Right-To-Know Law, which was instituted to increase transparency of public agencies by easing the burden on citizens who wanted to review public documents.

Historically, according to Pennsylvania Governor Ed Rendell in 2008, "Pennsylvania had one of the worst open records laws" (Pennsylvania Office of the

Governor, 2008). Pennsylvania instituted a Right-to-Know Law in 1957 (P.L. 390, No. 212) that had remained relatively unchanged until significant revisions were made in 2008. In a Pennsylvania Senate Hearing in 2007, chief counsel for the Pennsylvania Newspaper Association, Terri Henning, said “most state laws, and the federal Freedom of Information Act, begin with the presumption that records in the possession of agencies that relate to public business are public records...Pennsylvania law starts from a very narrow place and then gets narrower" (Mauriello, 2007).

The Better Government Association (BGA), according to its website, “works for integrity, transparency, and accountability in government by exposing corruption and inefficiency; identifying and advocating effective public policy; and engaging and mobilizing the electorate to achieve authentic and responsible reform” (2013). The BGA is headquartered in Chicago, Illinois, and has focused much of its investigative work in the Chicago area. However, within the past decade, BGA has sponsored three different studies that examined the freedom of information acts of all 50 state governments, and the District of Columbia. In all three studies, Pennsylvania government did not fare well - receiving a letter grade of ‘F’ in each study. All three studies were conducted before Pennsylvania’s revised Right-To-Know Law went into effect on January 1, 2009.

### **The New Right-To-Know Law Circa 2009**

In 2008, when Pennsylvania Governor Ed Rendell signed the revised Right-To-Know Law into law, he said “Pennsylvania had one of the worst open records laws because it allowed too many records to be classified, essentially, as closed, unless the person asking could prove that those documents should be public. With the new law, it's now the state agency's burden to show why information should be protected”

(Pennsylvania Office of the Governor, 2008). One of the new provisions of the 2008 Right-To-Know Law (65 P.S. § 65.101 et seq), was the creation of a state oversight agency – the Office of Open Records (OOR). Rendell appointed Terry Mutchler as the executive director of the Office of Open Records. Less than a year into her job, Mutchler recognized Pennsylvania’s questionable history in terms of open records, stating “the reality is when I look at what Pennsylvania experienced being the worst or one of the two worst in the nation for government access laws, this is a seismic shift, and it has opened a lot of filing cabinets” (Silver, 2009).

The Right-To-Know Law defines a record as “information, regardless of physical form or characteristics, that document a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency” (Section 102). All public agencies, including public school districts, are required to abide by the law. The burden of proving whether a record is a public record now falls on the agency possessing the record. The 1957 Right-To-Know Law implied that the requester was burdened to prove whether a record was public.

While the 2008 Right-To-Know Law is a vast improvement over the 1957 version in placing burden on the public agency to justify withholding the record, the Penn State scandal highlights some of the issues that have begun to plague the law. Penn State, along with three other universities, receive funding from the state, yet they are considered state-related (Section 1501), and thus, under the Right-To-Know Law, are exempt from granting many open record requests.

The Right-To-Know Law also includes 30 exemptions (Section 708) which can be applied by all public agencies to deny record requests. Many of the exemptions are

broad in nature which makes them open to wide interpretation. Specifically, school districts and other agencies often cite internal, pre-decisional deliberations (Section 708(b)(10)(i)(A)), see *Easton Area School District v. Baxter*, 2012) and criminal or non-criminal investigations (Section 708(b)(16)(17)), see Berry, *Pittsburgh Post-Gazette*, 2012) as exemptions that preclude them from releasing a record to a requester. Problems with the Right-To-Know Law began almost immediately after enactment of the amended law with Mutchler writing a letter in frustration in the spring of 2009 to Rendell. Mutchler expressed concern as to how “some (state) agencies...are using the Right-To-Know Law as a shield with which to block information rather than a tool with which to open records of government” (Couloumbis, 2009).

Under the Right-To-Know Law, a person who has their record request denied by a public agency may appeal the decision to the Office of Open Records (OOR). See Appendix C. If all prescribed timelines were followed, the Office of Open Records will issue a ruling on whether the record should be released. However, the Office of Open Records has no enforcement power; therefore the agency denying the request is not bound by the Office of Open Records decision. The requester, if they possess the necessary financial resources, would need to take the agency to court if they hope to acquire the record. Mutchler wrote in 2010 that “if a (public) agency denies records, and the Office of Open Records orders release, some agencies simply refuse to obey the Order. This leaves citizens in a pre-2009 conundrum: go to court or forget the request. This issue must be resolved or the Right-To-Know Law becomes a meaningless process” (OOR, Annual Report 2010, p.3).



The Right-To-Know Law cases that have been heard in the Pennsylvania Judicial System have narrowed the interpretation of the law even further. Two high profile cases, both of which overturned Office of Open Records decisions, were *PSEA v. Commonwealth of Pa* (2010), which prevented the release of the home addresses of public school teachers, and in the *Department of Corrections v. OOR* (2011), the Court ruled that when a requester appeals an agency's denial of a request for records, the appeal must specify any defects in the agency's stated reason for denial. This decision prompted the Office of Open Records to dismiss hundreds of citizen appeals to their office. The ruling prompted Mutchler to say "a citizen almost has to be a lawyer [now] to have a case reviewed by us. If they don't have the necessary requirements to get in the door, we can't take the case" (Heidenreich, 2011).

### **Appeals to the Office of Open Records**

Since the Right-To-Know Law was enacted in 2009, cases involving school districts comprise a majority of the appeals filed with the Office of Open Records. According to the Office of Open Records 2009 Annual Report, school districts had the highest number of appeals filed with the Office of Open Records, more than any other local agency. School district appeals represented 29% of all appeals filed with the Office of Open Records. The 2010 Annual Report detailed that school districts continued the trend of having the highest number of appeals with 24%. The 2011 Annual Report stated that 23% of all appeals involved school districts (OOR Annual Reports, 2009, 2010, 2011).

Unlike other Pennsylvania public agencies, school districts also have to abide by the Family Educational Rights and Privacy Act (FERPA). FERPA is a federal law which

was enacted in 1974 that requires schools to enact and enforce policies to safeguard the confidentiality of students educational records (20 U.S.C. § 1232g). Pennsylvania's Right-To-Know Law does have a provision (Section 305) that allows for disclosure exemptions if covered under federal law. Therefore, the requirements of FERPA supersede the Right-To-Know Law. For Pennsylvania school districts, protecting the privacy of records that include student information is in direct conflict with the broad transparency intent of the Right-To-Know Law. This clash between individual privacy and the transparency movement is perhaps one reason why school districts historically have the most appeals filed against them with the Office of Open Records. Other federal laws that limit access to student records include the Health Insurance Portability and Accountability Act (HIPAA), (1996), the Individuals with Disabilities Education Act (IDEA), (2004), and No Child Left Behind (NCLB), (2002). Whether these superseding federal privacy laws explain the higher proportion of denial requests and their appeals to the Office of Open Records remains a question at the present time, as no one has analyzed the reasons requests for school records are so often appealed.

Another possible explanation is how the responsibility for implementing the Right-To-Know Law is distributed in school districts. The Right-To-Know Law dictates that every public agency designates an Open Records Officer (Section 502). There is no guidance within the law that states who should be the Open Records Officer. In many cases, existing employees of the public agencies received the additional responsibility of being the Open Records Officer. The lack of consistency is especially apparent in school districts across the state as a wide range of employees have been designated the Open Records Officer. Specifically, the list of Open Records Officers in school districts

includes superintendents, business managers, other central office administration, administrative assistants, building administration and solicitors. Depending on the demands of their primary position, the Open Records Officer may not have the time to properly address open record requests as dictated by the Right-To-Know Law.

Besides ruling on open record request appeals, the Office of Open Records is also responsible for other functions of the Right-To-Know Law. Foremost is their participation in the court cases that are appealing their final determinations. At the end of 2011 almost 200 cases were pending in some branch of the Pennsylvania Judicial System (OOR Annual Report, 2011, p.15). The Office of Open Records also issued over 4000 final determinations since 2009 (p. 3). Mutchler has consistently stated that the Office of Open Records is understaffed with nine employees, and severely underfunded. Mutchler wrote an editorial in the *Harrisburg Patriot-News* during the Office of Open Records first year of existence saying:

All is not well at Pennsylvania's new Office of Open Records... The very purpose of our office is to secure a citizen's right-to-know, which fosters accountability, prevents abuses of power and promotes trust in government. I implore lawmakers and the Rendell administration to match its stated mission of openness with money. (2009)

Another role for the Office of Open Records is to conduct mediation for those parties in a dispute over a record release. In 2011, only seven mediations were held, with only two being deemed successful (OOR Annual Report, p.20). The mediation process could save both parties in the appeal process the cost of going through the Judicial System. In its infancy, the Office of Open Records offered many trainings but the number

has significantly declined as the staff is overwhelmed with its other duties. “These trainings are vital to assisting requesters and especially agencies comply with the law in an efficient and cost-effective manner” (p.19). Only three trainings were scheduled for 2012 according to the Office of Open Records website (2013). Training is not mandated by the Right-To-Know Law. As Open Records Officers retire or change positions within school districts, the lack of training could ultimately put a financial burden on a district in solicitor fee’s or compliance issues.

### **Purpose of the Study**

When the Right-to-Know Law was amended to be effective on January 1, 2009, in Pennsylvania, all 500 school districts were required to designate an Open Records Officer. Over the past four years, school districts have had more record request denials appealed to the Office of Open Records than any other public agency (OOR, Annual Reports 2009, 2010, 2011). The Open Records Officer in a school district has the tremendous responsibility of analyzing a record request, determining if it is a valid request, and where and how the information should be gathered – all while working within predetermined timelines. The Open Records Officer also decides whether a request should be reviewed by the school district solicitor which would automatically assign a financial cost to every request a district receives. A request that is wrongfully denied or ignored may result in the district being taken to court in the Commonwealth. The Open Records Officer is usually the first person a requester comes in contact with and may set the tone as to whether the school district is acting in good faith as a public agency. The decisions initially made by a school district’s Open Records Officer may eventually cost a district thousands of dollars if a record request is not properly handled.

This study will evaluate the perceptions and experiences of the Open Records Officer of 100 school districts across Pennsylvania.

Specifically this study will answer the following research questions:

1. What is the profile of Open Records Officers in Pennsylvania public school districts? (Survey)
2. How compliant are school districts with procedural and notification requirements found in the Right-To-Know Law? (Analysis of Websites)
3. What have been the experiences of the school district Open Records Officers in terms of the frequency, nature, and disposition of record requests under Pennsylvania's Right-To-Know Law since 2009? (Survey, Analysis of Websites)
4. What are the perceptions of the Open Records Officers regarding the appropriate balance between transparency and organizational efficiency? (Survey)
5. What recommendations do Open Records Officers suggest to improve the implementation or the administration of the Right-To-Know Law? (Survey)

### **Significance of Study**

Every public agency in Pennsylvania has been impacted by the Right-To-Know Law, but seemingly, none as much as public school districts. School districts account for more appeals filed with the Office of Open Records than any other agency (OOR, Annual Report, 2009, 2010, 2011).

Audits have been performed periodically across the United States, usually by newspaper organizations, which detail the responsiveness of public agencies to a request for records. A few have been performed in Pennsylvania. In 2005, the *Philadelphia Inquirer* took part in a survey, in conjunction with the Associated Press, which sought

various records from 700 agencies across Pennsylvania including school districts, municipalities, etc. Record requests were made in conjunction with the 2002 version of Pennsylvania's Right-To-Know Law. The results showed that nearly 50% of the requests were met within a few days, "though in some cases only after participants had identified themselves as journalists" (Prichard, 2005). Specifically, school districts were asked to release the superintendent's employment contract while other agencies were asked for comparable types of records. The study found that "police and school officials were among the least compliant. Of 217 police agencies surveyed, about 40 percent denied access to call logs or incident reports, while only a slightly higher percentage, 67 of 130 school districts, turned over the superintendent's employment contracts" (Prichard, 2005).

Very few of these audits have been performed on a wide scale that has specifically targeted Pennsylvania public school districts. In 2007, two years after the Inquirer's survey, the *Altoona Mirror* requested the superintendent's contract of all 501 (at the time) school districts. Eventually, after multiple requests, nearly 89% of the requests were filled, although over 11% of the requests were either ignored or denied (Young, 2007).

The revised Right-To-Know Law mandated that every public agency, including school districts, designate someone in the agency as the Open Records Officer (Section 502). The Open Records Officers responsibilities are in addition to their primary job as a school district employee. Kimball (2012) studied the perceptions of members of the National Information Officers Association, an organization that represents those whose

prime responsibility is to be the Open Records Officer for public safety agencies. Kimball found that:

Federal and state employees tasked with providing requested access to documents are generally the ones who decide whether to comply with transparency provisions. Because these [ORO] are on the front lines of records requests it is important to understand their perceptions of the law and their ideas for improving it. (2012, p. 299)

Kimball's study focused on participants whose full time job was to process record requests. A majority of participants in the study, who believed in government transparency, stated that they had enough training and wished that requesters had more training. They also wanted the mandated response timelines relaxed and felt that their agencies needed increased funding to have more staff available to handle record requests.

While Kimball's study suggests that an Open Records Officer has a critical role in implementing the Right-To-Know Law, few studies have examined the profile of the individuals who serve in that capacity, their experiences, or perceptions regarding its implementation.

Specifically, there has been no study of Open Records Officers in Pennsylvania as they apply the state's Right-To-Know Law. This study will examine their role, experiences, and perceptions as a result of implementing the Right-To-Know Law in their school districts.

Technology has changed the way citizens can access public records. A number of government watch dog groups have been created that use the internet to examine, disseminate, and relay public information. *The Sunshine Review*, according to its website,

is a “non-profit organization dedicated to state and local government transparency. The Sunshine Review wiki collects and shares transparency information and uses a ‘10-point Transparency Checklist’ to evaluate the content of every state and more than 6,000 local government websites.” (The Sunshine Review, 2013). This organization grades school districts on whether taxes, budgets, elected officials, contracts, and open records, among other items, are posted on the district website. In 2010, after a review of the transparency practices of every school district website, the Sunshine Review assigned a letter grade of ‘D –’ to Pennsylvania school districts (The Sunshine Review, 2013).

Although the literature suggests public awareness of the Right-To-Know Law is critical to transparency, Section 504 of the law mandates that if a public agency maintains an internet website, which is currently the case for every Pennsylvania school district, then they must post the following online:

1. Contact information for the district’s Open Records Officer.
2. Contact information for the Office of Open Records.
3. A form which may be used to file a request.
4. Regulations, policies, and procedures of the agency relating this act. (Section 504(b))

No study exists that analyzes public school districts’ compliance with the Right-To-Know Law in terms of how open records can be acquired by a requester. This study will examine the websites of school districts to determine the compliance level with Section 504 of the Right-To-Know Law. The websites will also be analyzed to determine the accessibility of the Right-To-Know Law information. Difficulty in finding open records information on websites implies that a district may be less than transparent.



Pennsylvania's Office of Open Records is required by the Right-To-Know Law to issue final determinations after considering an appeal. The Office of Open Records maintains a database of all its final determinations since its inception. There has been no study that analyzes and describes the nature of requested records; the basis relied on by the district in denying the requests, or the outcomes of such appeals. This study will analyze the Office of Open Records final determinations in an attempt to answer these questions. There have been two empirical studies of how organizations respond to record requests, however, both were prior to the amendments to Pennsylvania's Right-To-Know Law and shed light on only one specific type of record, which was the superintendent's contract.

A stratified random sample of 100 public school districts will be chosen for this study. The Open Records Officer of the school districts will be surveyed to understand their perceptions of how the Right-To-Know Law is applied in their districts. The same 100 districts will have their websites analyzed to determine the compliance level with the Right-To-Know Law, as well as to determine the ease of use for someone researching how to obtain information from the district. The Office of Open Records database will then be analyzed to determine how many and what types of Right-To-Know Law appeals have been filed against any of the 100 districts and the outcome as determined by the Office of Open Records or a court ruling.

The 100 randomly chosen districts will be categorized by the size of the student population. The size of the district may enhance or restrict the capacity of the district to meet the requirements of the Right-To-Know Law. Larger districts are more likely to have the resources, which include personnel and record retention, to have the ability to

comply with the mandates of the Right-To-Know Law. This study will attempt to determine if the size of a school district factors into compliance issues with the Right-To-Know Law.

This study will highlight the challenges of the Right-To-Know Law and how school districts may be able to reduce the uncertainty or adversarial nature of the law and be transparent to its public; yet maintain the confidentiality of other records as required by FERPA and other federal statutes. This study will show any continual and common misconceptions or applications of the law which will allow for specific training for school districts. The study will also provide a template for possible revisions to the law as it applies to school districts, including whether the law should be differentiated according to the size of the district (Berman, 1981), and whether an increase in funding at both the state and local levels could possibly produce a more effective mandate.

### **Limitations**

1. As a superintendent of a public school district in Pennsylvania, I am aware that I may have personal biases towards state education policy and funding. I am not an attorney and have not had extensive training in legal research or terminology. Also, my position may bias the Open Records Officers who complete the survey.
2. The survey will be sent to a stratified random sample of 100 school districts. There is a possibility that many surveys will not be completed or that one cross section of school districts will be better represented than others.
3. It is assumed that the Open Records Officer will provide truthful, honest answers. Despite the fact that the Open Records Officers and their school districts will not

be identified by name, a possible mistrust of not knowing the researcher could exist that prohibits them from answering questions honestly.

4. A majority of the appeals filed with the Office of Open Records are against larger public school districts in Pennsylvania, specifically the City of Philadelphia School District. The final determinations involving these school districts may not be applicable to smaller districts in the state, but will be discernible through this analysis.
5. Many news media organizations sponsor their own online blogs. These blogs can blur the line between credible news reporting and the personal opinion of the reporter in terms of what records are or should be considered subject to the Right-To-Know Law.
6. There are no limits to how many records one person can request from a public agency. One person, who has made multiple requests, may skew the number of requests or appeals processed by a particular school district.
7. The public may be confused by the Right-To-Know Law requirements, but the school district is responsible to respond to every request. The number of record requests and appeals of their denial may be higher for a school district if there is confusion about the requirements on the public's part.
8. The researcher will analyze both school district websites and the Office of Open Records final determination database. Despite a thorough review, the possibility exists that information may be available on these websites that is not found by the researcher.

### **Design of the Study including Data Collection and Analysis**

A mixed methods approach will be used in this study with the Literature Review combined with the analysis of three sources of information. Specifically, a Triangulation Design, which utilizes a convergence model, will merge all data sources in order to answer the research questions (Creswell, Plano Clark, et al., 2003; Greene, Caracelli & Graham, 1989). Data sources will include a survey of Open Records Officers, an audit of website compliance, and an analysis of appeals made to the Office of Open Records. For all three sources, a stratified random sample of 100 Pennsylvania public school districts will be used. Districts will be separated in to three categories based on the size of the student population. There are 500 public school districts in Pennsylvania, with 14% of these districts having enrollments over 5,000 students (Pennsylvania Department of Education, 2012). For the purpose of this study, these schools will be considered large. Medium school districts make up 39% of all school districts and are comprised of enrollments between 2,000 and 5,000 students. Finally, small school districts are less than 2,000 students and make up 47% of all districts in Pennsylvania.

#### **Open Records Officer Survey**

The first source of information will be gathered from a survey that will be sent to the Open Records Officer of the chosen school districts. Surveys will be emailed or sent to the Open Records Officer of each of the 100 selected school districts. Using the stratified random sample, 14 large districts, 39 medium districts, and 47 small districts will receive the survey.

The survey will be used to determine the profile of the Open Records Officer in the school district. The profile will include the primary position of the Open Records

Officer in the school district, their knowledge of the Right-To-Know Law, and the level of training they have received in the Right-To-Know Law. Their experiences will be surveyed, including the number of Right-To-Know Law requests they have received, the capacity of the district to process requests, and the amount of time they spend on the Right-To-Know Law. Their personal perceptions of district policies and practices and the Right-To-Know Law will be documented, as well as any potential improvements or changes they feel would make the Right-To-Know Law more applicable for public schools. The survey questions will be piloted with a group of Open Records Officers before the survey is distributed to promote reliability.

#### **Audit of District Websites**

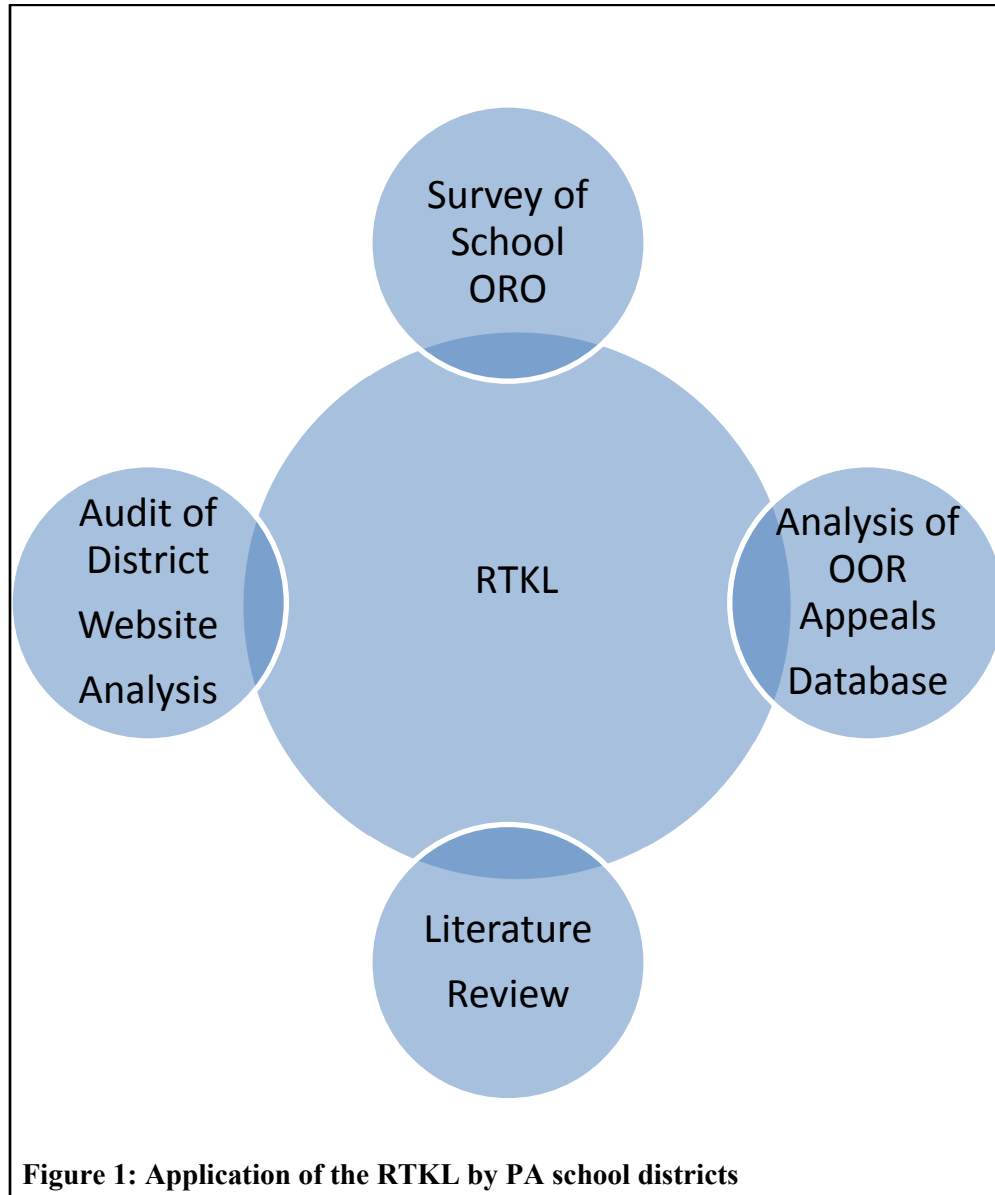
The second source of information for this study will be an analysis of the websites of the 100 chosen school districts. The Right-To-Know Law is clear on what is to be posted on a public agency's website concerning the requirements of the law. Each website will be examined to determine if a) an Open Records Officer is designated; b) their contact information (address or email) is displayed; c) a form to file a request is accessible; d) a reference to the right to appeal a denial to the Office of Open Records is displayed; and e) a statement concerning the district's policy on open records is displayed. The websites will also be evaluated on the accessibility of the Right-To-Know Law information. For example, it will be noted if the Right-To-Know Law information is on the home page or if it requires accessing multiple levels of the website to find the desired information, if it is available at all.

**Analysis of Appeals to the Office of Open Records**

The third source of information for this study will be the Office of Open Records website appeals database. Under the Right-To-Know Law, if a school district rejects a record request, the district must state the reason for the rejection. The requester of the record then has a right to file an appeal with the Office of Open Records. The Office of Open Records will issue a final determination opinion on the appeal. The Office of Open Records maintains a database of all of the final determinations it has ruled on since 2009. The database will be analyzed to determine how many final determinations have been issued by the Office of Open Records that involves appeals for any of the 100 subject school districts. When applicable, the specific exemption that was cited by the school district for rejecting the original record request will be noted. The final determinations will be quantified for each district, indicating what appeals have been granted, what appeals have been denied, and what appeals have been dismissed due to a technicality that involves not following the legal procedures of the Right-To-Know Law. A requester has the right to file an appeal with the Court of Common Pleas if their appeal is dismissed or denied by the Office of Open Records. This study will also note any appeal that is processed in the Pennsylvania judicial system and the highest court in which it was heard. Both the district website analysis and the Office of Open Records review will be categorized in a data table.

Using a literature review that features many first-hand accounts of how the Right-To-Know Law has been implemented since 2009, combined with the Open Records Officer survey, the website audit analysis, and the Office of Open Records database

review, this study will paint a holistic picture of the application of the Right-To-Know Law by Pennsylvania school districts. See Figure 1.



### Definitions

**Commonwealth Court** – In Pennsylvania, the Commonwealth Court hears the appeals from final orders of certain state agencies such as the Office of Open Records.

**Court of Common Pleas** – The Courts of Common Pleas are the trial courts of Pennsylvania. Major civil and criminal cases are heard in these courts. Judges also decide cases involving adoption, divorce, child custody, abuse, juvenile delinquency, estates, guardianships, charitable organizations and many other matters.

**Exemption** – Government records that are not accessible via Pennsylvania’s Right-To-Know Law. There are 30 categories of exemptions. Records protected by a privilege are also exempt. The universities in Pennsylvania that are considered state-related institutions and many of their records are considered exempt under the Right-To-Know Law.

**Final Determinations** – Final ruling by the Pennsylvania Office of Open Records. The ruling is issued after an appeal was made by either party in Right-To-Know Law dispute. If either party disagrees with the final determination of the Office of Open Records then they may make an appeal to Pennsylvania Commonwealth Court or Court of Common Pleas. The Office of Open Records has no enforcement power under the Right-To-Know Law.

**FERPA** – The Family Educational Rights and Privacy Act – (20 U.S.C. § 1232g; 34 CFR Part 99) – is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level.

**HIPPA** – Health Insurance Portability and Accountability Act – (Pub. L. 104-191, 110 Stat. 1936) – is a Federal law designed to provide privacy standards to protect patients'



medical records and other health information provided to health plans, doctors, hospitals and other health care providers.

**IDEA** – Individuals with Disabilities Education Act – (Pub. L. No. 108-446, 118 Stat. 2647, December 3, 2004) – is a law ensuring services to children with disabilities throughout the nation. IDEA governs how states and public agencies provide early intervention, special education and related services to children and youth with disabilities.

**Mediation** – The Right-To-Know Law allows for record requesters and public agencies to file for mediation with the Office of Open Records in lieu of going to court when there is a dispute over whether a record should be released. The mediation decision is non-binding.

**NCLB** – No Child Left Behind – (Pub L 107–110— Section 9528) – Access to student recruiting information - each local educational agency receiving assistance under this Act shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings.

**Open Records Officer (ORO)** – Pennsylvania’s Right-To-Know Law mandates that every public school district identify an Open Records Officer who is responsible for responding to Right-To-Know requests.

**Pennsylvania’s Office of Open Records (OOR)** – The Mission of the Office of Open Records is to implement and enforce the state’s Right-To-Know Law and serve as a source for citizens, agencies, public officials and members of the media in obtaining public records of their government.

**PSEA** – Pennsylvania State Education Association – is Pennsylvania’s largest teacher’s union.

**Right-To-Know Law (RTKL)** – (65 P.S. § 65.101 et seq.,) – Reauthorized in Pennsylvania in 2009, the new law assumes all records are public unless proven otherwise by a public agency.

## Chapter Two

### **Literature Review**

Whether it is referred to as the freedom of information, open or public records, right to know or transparency, the public has always sought access to governmental proceedings or finances. After all, a government funded by the taxation of its public should be accessible to that same public. This study will illustrate how the freedom of information movement coincided with the genesis of the United States government and how it evolved as technological and cultural changes occurred.

Pennsylvania’s history of freedom of information laws will also be explored, with a large concentration on the revised Right-To-Know Law (RTKL) that was enacted in 2008. Specifically reviewed is how this mandate impacts public school districts in Pennsylvania. Pennsylvania’s Right-To-Know Law will also be compared to other states open records legislation. At the conclusion of this section, will be suggestions for improvements in the Right-To-Know Law based on what researchers have found effective across the United States.

Recent research will be reviewed which either examines the open records audits of public agencies, including school districts, or documenting the perceptions of those people responsible for providing open records to the public.

School districts are in the unique position of protecting student records under federal guidelines such as FERPA. This literature review will also feature an examination of how privacy laws in general, and FERPA specifically, can be in direct conflict with the mandates of open records laws. Also, does the general public actually need or care to have more information available to them?

Finally, this section will conclude with an overview of what constitutes effective policy implementation which includes the models of Sabatier and Mazmanian (1980), Montjoy and O'Toole (1979), and Berman (1981). These theorists' concepts will be used later in the study to determine how effective the Right-To-Know Law has been implemented by Pennsylvania's public school districts at both the local and state levels.

### **History of the Freedom of Information in the United States**

Kent Cooper, executive director of the Associated Press, declared in a January, 1945, speech made to his peers that "the citizen is entitled to have access to news, fully and accurately presented. There cannot be political freedom in one country, or in the world, without respect for the right to know" (p.16). As a result of the speech, Cooper later claimed that he began the 'the public's right to know' movement (1956).

Cooper's declaration of the public's right to know was made as World War II was ending but it was also a period where the national press was at odds with public government. Five months after Cooper's statement that information should be accurately presented to the citizenry, the Supreme Court upheld a lower court's ruling against the Associated Press in which the news organization violated the Sherman Anti-Trust Act.

In the lower court opinion, Judge Learned Hand warned of a private monopoly, such as the Associated Press, being the lone source of public information:

The First Amendment ... presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and will always be, folly; but we have staked upon it our all. (*United States v. Associated Press*, 1943/1945)

Earlier in the decade, after continual criticism of the Roosevelt Administration by the press, and amongst the backdrop of the ongoing Associated Press court case, tension between government officials and the news media hit a turning point at a National Association of Broadcasters (NAB) convention when the Chairman of the Federal Communication Commission, James Lawrence Fly, denounced the NAB as a “so-called trade association” and described the industry’s leadership as “a dead mackerel in the moonlight – it both shines and stinks” (NAB, 1941, p.7).

In an effort to define the role of the media and to create a certain level of decorum for the press, Henry Luce, president of the Time-Life publishing empire, financially supported the Commission on Freedom of the Press in 1943. After four years, the Commission released its’ report and found that newspapers should redefine themselves as "common carriers of public discussion" by providing:

- A truthful, comprehensive account of the day's events in a context which gives them meaning.
- A forum for the exchange of comment and criticism.
- A means of projecting the opinions and attitudes of the groups in a society to one another.

- A way of reaching every member of the society by the currents of information, thought, and feeling which the press supplies (Commission on Freedom of the Press, 1947).

While the term ‘right-to-know’ may have been coined by Cooper in the 1940s, and the clash between government and the press set in motion the creation of mandates that have evolved into current policy, the public’s desire for access to government information can be traced back to the revolutionary era.

William Bolla, a Massachusetts attorney who fell out of favor with both the English Parliamentary and Colonial government in the 1760s, began to publish a series of pamphlets that promoted that all Americans should enjoy all of the liberties of those in England including freedom of the press (Meyerson, 1968). Bolla said that:

The free examination of public measures, with proper representation by speech or writing of the sense resulting from that examination, is the right of the members of a free state, and requisite for the preservation of their other rights; and that all things published by persons for the sake of giving due information to their fellow subjects, in points immediately affecting the public welfare, are worthy of commendation. (1766, p.4)

Bolla, as with other libertarians of his era, did recognize the need for a free press to abide by common law principles while not tolerating those who engaged in libel (Meyerson, 1968, O’Brien, 1981). Bolla observed that the right of free press should abide by ‘just and proper bounds’ (1766). The free press advocates of the eighteenth century foreshadowed the issues of the 20th century such as the yellow journalists and Muckrakers during the progressive era, the broadcast news era created by the inventions

of radio and television and continuing today with 24 hour news cycles, the internet and social media.

A decade after Bollan's publications, the Declaration of Independence, referenced the lack of public involvement or scrutiny in British government by stating, "The present King of Great Britain... has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures" (1776).

During the Constitutional Convention of 1787, as delegates laid the groundwork for the government of the United States, debate centered on the openness of the new government. James Wilson, a delegate from Pennsylvania, and an eventual appointee to the first Supreme Court, stated "the people have a right to know what their agents are doing or have done and it should not be in the option of the legislature to conceal their proceedings" (1787). As a result of vigorous debate at the convention, Article I of the United States Constitution requires that the minutes of each legislative house proceedings be published with the exception of those areas that require secrecy. In defending the lack of complete disclosure of the legislative bodies, George Mason explained at the Virginia convention to ratify the Constitution "in matters relative to military operations and foreign negotiations, secrecy was necessary sometimes; but [I do]... not conceive that the receipts and expenditures of the public money ought to ever be concealed. The people... had a right to know the expenditures of their money" (1788). A common misconception that continues to exist is that those who pay taxes have a constitutional right to know about everything that is

occurring in their government. The constitution, specifically the First Amendment, does not give the public unlimited access to government proceedings. O'Brien (1981) summarizes that:

The argument that the public's right to know attains constitutional legitimacy in terms of the historical background of the First Amendment is a pretense with no basis in the debates over the adoption, ratification, and interpretation of the First Amendment. (p.53)

Specifically, the Constitution in the First Amendment did address the freedom of speech, freedom of the press and the right of people to peaceably assemble. James Wilson, in resonating the thoughts of Bollan before him, said during the Constitutional Convention "What is meant by the liberty of the press is that there should be no antecedent restraint upon it; but that every author is responsible when he attacks the security or welfare of the government, or the safety, character, and property of the individual" (Elliot, 1836).

War, or the fear of war, has historically been the backdrop when the First Amendment has been challenged by Congress. Within a decade of the ratification of the Constitution, Congress enacted the Sedition Act of 1798 which stated:

To write, print, utter or publish, or cause it to be done, or assist in it, any false, scandalous, and malicious writing against the government of the United States, or either House of Congress, or the President, with intent to defame, or bring either into contempt or disrepute, or to excite against either the hatred of the people of the United States, or to stir up sedition, or to excite unlawful combinations against

the government, or to resist it, or to aid or encourage hostile designs of foreign nations.

The Sedition Act was in response to criticism of President John Adams and Federal government as the United States was on the brink of war with France. Thomas Jefferson, Vice President and a Founding Father of the Constitution was one of many critics of the Sedition Act "I am... for freedom of the press, and against all violations of the Constitution to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agents" (Miller, 1951 p. 231). The Sedition Act expired on Adams' last day in office March 3, 1801. Over 200 people were prosecuted under the Sedition Act and were subsequently pardoned by President Thomas Jefferson. Two decades later, James Madison, a fellow Founding Father and Fourth American President, echoed a similar tone of Jefferson by saying "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both" (Hunt, 1910).

Other war time Acts of Congress that reduced the freedoms afforded by the First Amendment included the Espionage Act of 1917 and the following year – the Sedition Act of 1918, as well as The War Relocation Authority Act, the Smith Act of 1940 and the Patriot Act of 2001. Similar to the Sedition Act of 1798, these Acts of Congress contradicted parts of the First Amendment and were enacted under the pretense of national security at a time of crisis. Only the Patriot Act remains in effect and it is under consistent scrutiny. Jefferson had faith that short term challenges to the Constitution would be outweighed by the public's right to know, stating:



I am persuaded that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors, and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people.

(Jefferson to Edward Carrington, 1787, p. 48)

In 1890, Samuel Warren and Louis Brandeis wrote, “Political, social and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society” (p. 193). Warren and Brandeis’ article *The Right to Privacy* recognized the need for individuals to be protected from government invasions of privacy and the protection against harmful uses of personal information. While both issues remain relevant in modern society, the harmful uses of personal information have stretched the boundaries of the First Amendment given the technology available to retrieve such information.

The boundaries of the First Amendment, particularly the Freedom of the Press, were stretched by William Randolph Hearst and other newspaper publishers in the 1890’s. This period of yellow journalism created an atmosphere of sensationalized news which gave the public more information than it ever had access to before. It was the advertised policy of Hearst’s New York Journal newspaper “to engage brains as well as

to get the news, for the public is even more fond of entertainment than it is of information” (Campbell, 2003).

Yellow journalism also created an outlet for investigative articles which exposed corruption in both political and economic arenas during the Progressive Era in the early 20th century. Theodore Roosevelt was a reformer who used this information to win the Presidency in 1901. However, Roosevelt soured on the same type of journalism as it became critical of his Presidency. In a 1906 speech to Congress Roosevelt popularized the term Muckraker, stating:

There is filth on the floor, and it must be scraped up with the muck rake; and there are times and places where this service is the most needed of all the services that can be performed. But the man who never does anything else, who never thinks or speaks or writes, save of his feats with the muck rake, speedily becomes, not a help but one of the most potent forces for evil... There are in the body politic, economic and social, many and grave evils, and there is urgent necessity for the sternest war upon them. There should be relentless exposure of and attack upon every evil man, whether politician or business man, every evil practice, whether in politics, business, or social life. I hail as a benefactor every writer or speaker, every man who, on the platform or in a book, magazine, or newspaper, with merciless severity makes such attack, provided always that he in his turn remembers that the attack is of use only if it is absolutely truthful.

Roosevelt’s reaction was no different than many public officials, including his relative Franklin, who later became president, who are scrutinized or continually questioned by the public’s right to know information. However, as Thomas Jefferson

stated during a particular critical time of his Presidency, “When a man assumes a public trust, he should consider himself as public property” (Rayner, 1834, p.356).

At the end of the Muckraker period, the Federal Legislature passed its first public disclosure law in 1910. The Federal Corrupt Practices Act (2 U.S.C. Section 241), also known as the Publicity Act, that required political parties to detail expenditures. Future revisions of the law required candidates to disclose their individual expenditures as well. President Woodrow Wilson, in the same year that he was sworn into his first term in office, wrote of the importance of open government:

If there is nothing to conceal, then why conceal it? If it is a public game, why play it in private? If it is a public game, then why not come out into the open and play it in public? You have got to cure diseased politics as we nowadays cure tuberculosis, by making all the people who suffer from it live out of doors; not only spend their days out of doors and walk around, but sleep out of doors; always remain in the open, where they will be accessible to fresh, nourishing, and revivifying influences. I, for one, have the conviction that government ought to be all outside and no inside. I, for my part, believe that there ought to be no place where anything can be done that everybody does not know about. It would be very inconvenient for some gentlemen, probably, if government were all outside, but we have consulted their susceptibilities too long already. It is barely possible that some of these gentlemen are unjustly suspected; in that case they owe it to themselves to come out and operate in the light. The very fact that so much in politics is done in the dark, behind closed doors, promotes suspicion. Everybody knows that corruption thrives in secret places, and avoids public places, and we

believe it a fair presumption that secrecy means impropriety. So, our honest politicians and our honorable corporation heads owe it to their reputations to bring their activities out into the open. (1913, p.28)

Over a dozen Federal agencies were created during the 1930's under President Franklin Roosevelt's New Deal plan. "Many of these unregulated agencies grew exponentially during World War II which led to lack of direction and a lack of trust by the general public. With the haphazard habit characteristic of our political life, individual administrative agencies have been created as and when the need for them arose, without any logical system" (Schwartz, 1949, p. 57). Long time Virginia Congressman Howard Smith wrote:

The wide powers and formidable duties which have been delegated to many administrative agencies carry with them an avoidable latitude of discretionary powers... There is a growing lack of public confidence in the 'justice' meted out by administrative agencies, a growing discontent which has been aggravated by the mushroom like wartime growth in number and size of executive agencies... Unless steps are taken to constrain the semi-judicial functions of Administrative Agencies within bounds which are defined with some exactitude, they seem quite likely to grow to a size and an importance far greater than their parent, the Congress. Efficient administration might conceivably be achieved through the unchecked activities of such agencies, though history would seem to refute such a possibility. Democracy would soon wither and die in an atmosphere where bureaucratic rule can riot. (1944, p.8)

In 1946, Smith and his fellow Congressmen enacted the Administrative Procedure Act (APA, 60-237). The APA attempted to create consistent terminology across government agencies. However, the clarification of administrative definitions did not necessarily translate into effective practice. “To some extent the Federal Administrative Procedure Act has attempted to establish definitions of basic terms, but no mandate was given to the federal agencies to employ them, so the conflicting usage will continue” predicted Carrow (1948, p.214). Even though the APA continued the practice of allowing government agencies the unlimited discretion of withholding public access to records (Hammitt, 2000), it happens to be a key one (Act) for the purposes of administrative law, for it represents the first important Congressional attempt to deal as a whole with administrative process (Schwartz, 1949, p.58).

Similar to the Yellow Journalism and Muckraking periods of sensationalized media reports, and despite the enactment of the APA, government agencies were reticent to release information to the public citing, among other things, national security as the Cold War escalated. Sponsored by the American Society of Newspaper Editors (ASNE), attorney Harold Cross published *The People’s Right to Know* in 1953. Instantly, and despite the claims of Associated Press Executive Director Kent Cooper as being the father of the right to know movement, *The People’s Right to Know* “became the bible of the FOI (Freedom of Information) movement, the scholarly foundation for every major piece of federal legislation in the field, and a scrupulously researched but passionately written sourcebook for advocates of freedom of access at local, state and national levels” according to the ASNE (Kennedy, 1996). Cross not only detailed the inadequacies of government transparency, especially at the executive branch, he also offered a solution:

Congress is the primary source for relief. In its preoccupation with other problems it has left the field wide open for executive occupation. The time is ripe for an end to ineffectual sputtering about executive refusals of access to official records and for Congress to begin to exercising effectually its function to legislate freedom of information for itself, the public, and the press. The powers of Congress to that end are not unlimited but they are extensive. (1953, p. 246)

Concurrently, first term Democratic Congressman John Moss grew frustrated over the lack of information being released from the Republican controlled branches of Federal government. When the Democrats won control of the House of Representatives in 1955, Moss began the process of crafting legislation that would allow for more public access of government records (Blanton, 2006). During the Democratic presidencies of John Kennedy and Lyndon Johnson, the Freedom of Information movement gained support amongst the Republicans as well. Johnson signed the Freedom of Information Act (FOIA, 5 USC §552) in 1966 and the law went into effect the following year.

The FOIA applied only to federal agencies. It did not apply to records held by Congress, the courts, or by state or local government agencies. Similar to Pennsylvania's Right-To-Know Law of 1957, certain records were protected from disclosure by exemptions contained in the statute. The Freedom of Information Act entitled the following exemptions on documents being requested by the public:

1. Those documents properly classified as secret in the interest of national defense or foreign policy;
2. Related solely to internal personnel rules and practices;
3. Specifically exempted by other statutes;

4. A trade secret or privileged or confidential commercial or financial information obtained from a person;
5. A privileged inter-agency or intra-agency memorandum or letter;
6. A personnel, medical, or similar file the release of which would constitute a clearly unwarranted invasion of personal privacy;
7. Compiled for law enforcement purposes, the release of which
  - a. could reasonably be expected to interfere with law enforcement proceedings,
  - b. would deprive a person of a right to a fair trial or an impartial adjudication,
  - c. could reasonably be expected to constitute an unwarranted invasion of personal privacy,
  - d. could reasonably be expected to disclose the identity of a confidential source,
  - e. would disclose techniques, procedures, or guidelines for investigations or prosecutions, or
  - f. could reasonably be expected to endanger an individual's life or physical safety;
8. Contained in or related to examination, operating, or condition reports about financial institutions that the SEC regulates or supervises; or
9. And those documents containing exempt information about gas or oil wells.  
(Section 552).

In the two hundred years leading up to the passage of the FOIA, the press has been, and continues to be, in the forefront of the right to know movement. However, Journalism Professor John Merrill points out that editors select and reject government information that is published or broadcast. They consider what they do editing information, while government officials are managing or restricting information. Merrill states “only a very small portion of government information gets to the average citizen’s eye or ear. So in effect, the news media are guilty themselves of the same sins of omission and commission they point to in government” (1967, p.108).

Scandals have remained a catalyst for freedom-of - information movements worldwide. The United States FOIA would not be as far reaching had it not been for Watergate (Blanton, 2002 p. 52). The Watergate scandal, once again, highlighted the contentious relationship between the media and the Presidency. Also, Presidential Historian Bruce Buchanan, observed "It was a breach of faith. Watergate, along with the Vietnam War, changed American attitudes towards their government" (Harper, 1997, June 17). Recognizing the general mistrust of government, Congress, once again lead by John Moss, voted to strengthen the FOIA in 1974. However, Gerald Ford vetoed the bill two months after assuming the Presidency calling the revised FOIA “unconstitutional and unworkable” (Blanton, 2004). Congress overrode Ford’s veto and the new FOIA went into effect in February, 1975. The 1974 FOIA amendments considerably narrowed the overall scope of the Act's law enforcement and national security exemptions, and also broadened many of its procedural provisions -- such as those relating to fees, time limits, segregability, and in camera inspection by the courts. At the same time Congress enacted the Privacy Act (Pub. L. 93-579) which, according to Senator Edward Kennedy,



established “a right of access for individuals to their files, a right to correct mistakes contained in those files, and a responsibility on the part of the Government to protect personal information from misuse and disclosure which constitutes an invasion of privacy of the subject of that information” (Congressional Record, 1975). Congress also ratified legislation that applied directly to educational institutions, the Family Educational Rights and Privacy Act of 1974 (FERPA) was enacted to protect the privacy of students' education records, to establish the rights of students to inspect and review their education records, and to provide students with an opportunity to have inaccurate or misleading information in their education records corrected. FERPA also permits the disclosure by an institution without a student's prior consent of so-called directory information about that student (20 U.S.C. 1232g, 34 CFR 99).

The decade of open government continued in 1976 as Congress passed an open meeting law entitled ‘The Sunshine Act’ (Pub. L.94-409). The Sunshine Act is an amendment to the FOIA as it applies to the third exemption in the original law. The Commissioner of the Federal Communication Commission, Glen Robinson, stated the intent of the amendment:

Meeting behind closed doors creates suspicion. This does not mean, however, that government entities meeting in private engage in improper conduct. This Act was not designed to police agency conduct, but rather to remove the cloak of suspicion that surrounds the secrecy of closed meetings. Although it is hoped that open meetings will restore confidence and trust in government, the Act’s open meeting provisions are also intended to increase the public’s understanding of the

governmental process whether not the understanding results in greater or less trust. (Congressional Hearings 94)

The Act, which was already in place, in some form, in all 50 states, also called for meetings to be publically advertised in a timely manner and for meetings to open unless dictated by specific exemptions. The Sunshine Act, as with all freedom-of-information legislation, had to balance the need for information with the bureaucracy needed to fulfill the requirements of the law. The Act could have had more specifics; however any law that is tightly defined could run the risk of being bogged down in the details. As Baird (1977) observed about the Sunshine Act:

The Act would have become inflexible to the point that administrative efficiency might be seriously impaired and the quality of the work product adversely affected. While it is the public interest to have open government, it is also in the public interest to have a government which operates as efficiently and productively as possible. Therefore, enough flexibility had to be retained to avoid straight-jacketing the agencies subject to the Act's provisions. (p.571)

Over a hundred years after the passage of the Constitution, the first court challenge of whether a government record should be made public in Pennsylvania occurred. Cases involving private corporations had already been heard in the Pennsylvania courts; however Arthur Biddle, who was a candidate for the office of Philadelphia Solicitor, challenged whether the Controller of Philadelphia, John Walton, had the right to deny him inspection of records that documented a poll tax leading up to the election. In *Commonwealth ex rel Biddle v. Walton* (1897) the court upheld the right of Biddle to inspect the government records by saying:

Every corporator or citizen of a municipality has the right, on all proper occasions, to inspect and copy its records, books and documents. It is not confined to such persons only as may have a special interest in the result of the examination. And while, of course, this right must be exercised under such regulations as are reasonably necessary for the safety of the records sought to be inspected, and in such a manner and at such times as not to interfere with the business of the office where they are stored, the court will, by writ of mandamus, compel its recognition by the custodian of the records, in the event he forbid or obstruct their examination. They are public records, open to the inspection of every citizen, and it is not for the respondent to inquire into or pass upon the motives of those who ask to see them. (pp. 287, 288)

Pennsylvania courts remained silent on the public's right to request government records until the 1940s, which was also the time of Supreme Court cases such as *Associated Press*. What has become a frequently quoted case in the right to know movement, the Supreme Court of Pennsylvania ruled in the *Simon Election Case* (46, A 2d 243, 245. Pa, 1946) that government records should be "available to ... any citizen at all reasonable times." The Pennsylvania Superior Court ruled in 1948 that a person has right to request a public record and that "such a right need be sustained by no particular reason and may be exercised out of idle curiosity" (*Butcher v. Philadelphia Civil Service Commission*, 1948).

After many high profile events at the national level, such as the *Associated Press* court case, the enactment of the APA, and the McCarthy hearings, Pennsylvania finally enacted its own Right To Know Act (RTKL) in 1957 (65 P.S. §66). The Act provides that

“every public record of an Agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania.” The Act defined what constitutes a public agency, this definition included public school districts and state owned educational institutions. The Right-To-Know Law also defined a public record as documents relating to any financial transaction of an agency, any contract entered into by an agency, or any minute, order or decision made by an agency. Other sections of the 203 word document states that every public record should be made available for examination, allows individuals to copy records, subject to reasonable regulations by the agency, and finally, any individual denied access may appeal the denial in court.

The law was clear that not every government record was public. The Right-To-Know Law of 1957 also listed four exemptions that excluded records from being released to the public. The exemptions consist of documents that:

1. Involve an agency investigation;
2. Would harm an individual’s reputation or safety;
3. Are specifically exempted by another statute or court order;
4. Would cause the agency to lose any federal funding (P.L. 390, No. 212).

Pennsylvania’s first attempt at government transparency quickly became problematic. The limited scope of the Right-To-Know Law and vague terms such as ‘reasonable’ in the definition allowed for indiscriminate interpretation by government record keepers. The burden of proving whether a record was public fell upon the requester. If a record request was denied, the requester had the right to go to court to appeal the denial, but few members of the public had the money or resources to fight

such a battle against a public agency. Most importantly, there was no penalty for a public agency that refused to comply with the law.

In the same legislative term, an Open Meeting Act was passed which required that the meetings of certain state and local government agencies be open to the public and that notice of such meetings be given to the press and public (Pub. L. 257, 1957).

A year after enactment, the first court challenge to the Right-To-Know Law was heard by the *Pennsylvania Supreme Court in Wiley v. Woods* (1958). The court ruled that even though Wiley had a personal or property interest in a zoning issue in Pittsburgh, “she had the same right of access to the documents as any citizen under the Act.” Similar to the Biddle case, the court affirmed that purpose for requesting the record was irrelevant (p.848).

When Pennsylvania’s Right-To-Know Law was challenged in court, the judicial decisions often weakened the intent of the law. When the courts did uphold the tenants of the Right-To-Know Law, such as in Wiley, agencies could continue to disregard record requests due to the lack of financial or criminal penalty for willfully disobeying the law.

Following in the footsteps of the Federal Freedom of Information Act, Pennsylvania passed a Sunshine Law in 1974. The law required that all state and local agencies to hold public meetings when formal action is taken. Also required was public notice prior to such a meeting, limits on executive sessions and the punishment of any public official attending a secret meeting (65 P.S. §261). The punishment was listed as \$100 for illegal participation in a secret meeting.

Subsequent amendments to the Sunshine Law included “official action and deliberations by a quorum of the members of the agency shall take place at a meeting of

the public unless closed by an exception” (P.L.388, No.84, 1986) and “a public comment period must be provided before any official action is taken. Also if a person proves that a governing body violated the Sunshine Law ‘willingly’ or with ‘wanton disregard,’ the court must award all or part of the attorney’s fees and costs to the prevailing party” (P.L. 729, No. 93, 1998). A 2011 revision of the law increased the penalty for violating the Sunshine Law from \$100 to up to \$1000 and for placing the liability for the penalty on the individual public official and not on the agency (P.L.270, No.56, 2011).

Despite the numerous actions at the national level regarding government transparency in the 1970’s, Pennsylvania legislators did not take action on the antiquated Right-To-Know Law of 1957. In fact, scandals such as Watergate and Iran- Contra at the national level, and Lottery rigging and the impeachment of a Supreme Court Justice in Pennsylvania resulted in a greater mistrust of government (Drexler, 1994), yet the Right-To-Know Law remained unchanged until 2002.

The 2002 revision of the Right-To-Know Law (P.L. 663, No. 100) addressed record retention, recognized the exponential growth in how documents are stored, and established timelines for agencies to grant requests. However, the Right-To-Know Law continued to have a major flaw in that the requester continued to be responsible to prove that a record was public, this responsibility did not fall on the government agency.

On July 7, 2005 at 2:00 AM the Pennsylvania Legislature, without debate, voted themselves pay raises that ranged from 16% to 34% which set off a chain reaction that would alter the state's political landscape. “The immediate impact of the vote, which included a provision allowing lawmakers to take the money at once despite a prohibition in the state Constitution against doing so, was an awakening of public awareness of how

the legislature operates. It led to outcry from grassroots groups such as Democracy Rising, Rock The Capital and PACleanSweep and much more media scrutiny” (Baer, 2012).

As history has repeatedly shown, scandal has proven to be the impetus for change. Just as Watergate prompted multiple legislative actions by Congress in the 1970’s, the clandestine legislative pay raise of 2005 became the motivation for a more transparent state government.

One result of the backlash over the pay raise was that on February 14, 2008 a revised Right-To-Know Law (RTKL, P.L. 6, No.3) was signed in to law. The Right-To-Know Law went into effect on January 1, 2009.

The original Right-To-Know Law of 1957 remained relatively unchanged for 45 years. Even with a cosmetic update in 2002, which recognized the changes in technology since the original law was passed; Pennsylvania’s Right-To-Know Law continued to place the burden of determining whether a record is public on the requester. Pennsylvania Governor Edward Rendell celebrated the changes in the 2008 Right-To-Know Law by saying “Pennsylvania had one of the worst open records laws because it allowed too many records to be classified, essentially, as closed, unless the person asking could prove that those documents should be public, With the new law, it's now the state agency's burden to show why information should be protected” (Pennsylvania Office of the Governor, 2008).

## **Overview of the Right-To-Know Law of 2008**

### **The Office of Open Records**

One of the most significant changes to the Right-To-Know Law involved creating an agency, the Office of Open Records (OOR), which is responsible for overseeing the implementation of the law. According to the law, the Office of Open Records is responsible for the following:

- Providing information relating to the implementation and enforcement of the Act;
- Issuing advisory opinions to agencies and the public;
- Providing training to public officials;
- Assigning appeals officers to review certain agency denials;
- Establishing an informal mediation program to resolve disputes;
- Establish an internet website to disseminate information to the public as well as publishing the names and addresses of all open records officers in the state;
- Conduct a biannual review of fees charged under this Act;
- Annually report to the Governor and General Assembly (Section 1310 (a)).

As prescribed by the Right-To-Know Law, an Executive Director of the Office of Open Records, Terry Mutchler was appointed by Governor Rendell in April 2008. Mutchler recognized the significant upgrade of the Right-To-Know Law and the reputation of Pennsylvania in terms of previous open records legislation by saying “the reality is when I look at what Pennsylvania experienced being the worst or one of the two worst in the nation for government access laws, this is a seismic shift, and it has opened a lot of filing cabinets” (Silver, 2009, November 29) and “the OOR, as an independent agency, is the most important aspect of the RTKL” (Duratine, 2012).



The Executive Director is responsible for staffing the Office of Open Records with attorneys who are to act as appeals officers (Section 1310 (b), (d)).

In Section 504, the Office of Open Records is given the authority to “promulgate regulations relating to appeals involving a Commonwealth agency or local agency.” The Office of Open Records was not given any other clear authority under the Right-To-Know Law.

### **Definition of a Public Record**

The Right-To-Know Law defines a record as information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document. Specifically, a public record is defined as a record, including a financial record, of a Commonwealth or local agency that:

1. is not exempt under section 708;
2. is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
3. is not protected by a privilege.

An agency is a Commonwealth agency, a local agency, a judicial agency or a legislative agency. Public school districts would be considered a local agency (Section 102). Also, a record cannot be denied due to the intended use of the requester (Section 301).

As highlighted by Governor Rendell, the Right-To-Know Law reflects a shift in the burden of determining whether a record is public to the public agency. Section 305 states that “a record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record.” However, Harman (2008) points out that “because Section 305 requires that a piece of information be a ‘record’ before the burden is shifted, it does not resolve the issue of where the burden should lie for establishing that something is a ‘record’ in the first instance” (p.102). This discrepancy has led to numerous issues in the application of the Right-To-Know Law.

### **Exemptions**

Pennsylvania’s Right-To-Know Law was thrust into the national spotlight when a former Penn State football coach was charged with abusing children in November, 2011. Penn State Administrators were also indicted with covering up the abuse to protect the university’s reputation. In a report commissioned by Penn State, Louis Freeh (2012) found that “in order to avoid the consequences of bad publicity, the most powerful leaders at the University repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University Board of Trustees, the Penn State community, and the public at large” (p.16). National journalists utilized the Right-To-Know Law to investigate the breadth of the cover up at Penn State only to find that Penn State was not required to be as transparent as other Universities in the state. As defined in the Right-To-Know Law (Section 102), Penn State, along with Lincoln University, Temple University, and the University of Pittsburgh, are considered state-related institutions and not considered Commonwealth agencies and do not have to abide by the same rules as state-owned colleges. Therefore:

Even though Penn State receives more than \$200 million a year in taxpayer funds, the administration has always insisted as a state-related school, it does not have to share information as other public entities do...A lack of transparency created the conditions in which this horrific situation occurred. Its proof, once again that bad things happen in dark corners. (Harvey, 2012)

In addition to delineating the difference between state- owned and state-related institutions, the Right-To-Know Law lists 30 exemptions (Section 708) for public records that apply to all public agencies. While not as detailed and reflecting limited information available at the time, the original Right-To-Know Law of 1957 included four exemptions. The burden of proving that a record is exempt from public access is on the agency

§708(a) except:

- If the disclosure would result in the loss of state or federal funds §708(b)(1)(i), or the disclosure would reasonably be likely to result in substantial and demonstrable risk of physical harm or personal security of an individual §708(b)(1)(ii)
- The record places military, homeland security or public safety in jeopardy §708(b)(2)
- A record, the disclosure of which creates a reasonable likelihood of endangering the safety of a public building, public utility or other infrastructure resource §708(b)(3-4)
- A record of an individual's medical history or disability, worker's compensation information §708(b)(5)

- A record containing all or part of a SSN, driver's number, personal financial information, home & cellular telephone numbers, personal e-mail addresses, employee number or other confidential ID number §708(b)(6)(i)(A)
- A spouses name; marital status, beneficiary or dependent information §708(b)(6)(i)(B)
- letter of reference for non-elective or appointed positions requiring senate confirmation §708(b)(6)(i)
- A performance rating or review §708(b)(6)(ii)
- The results of civil service tests shall not be disclosed if restricted by CBA. Only test scores that of individuals who were passing may be disclosed §708(b)(6)(iii)
- §708(b)(7) RELATES TO AGENCY EMPLOYEES
- The employment application of a person not hired by an agency §708(b)(7)(iv)
- Workplace support services program information §708(b)(7)(v)
- Written criticisms of an employee §708(b)(7)(vi)
- Grievance Material including documents relating to discrimination and sexual harassment §708(b)(7)(vii)
- Information regarding discipline, demotion or discharge contained in a personnel file. This does not apply to final action by an agency that results in demotion or discharge. §708(b)(7)(viii)
- An academic transcript §708(b)(7)(ix)
- Strategies and negotiations relating to labor negotiations, except final contracts §708(b)(8)(i)

- Any exhibits entered into evidence at an arbitration hearing based upon a CBA grievance §708(b)(8)(ii)
- Internal agency predecisional deliberations and strategies used to develop or achieve a successful budget, legislative proposal or regulation §708(b)(10)(i)(A-B)
- A record presented which is not otherwise exempt, but is presented to a quorum for deliberation in accordance with the Open Meetings law is a public record §708(b)(10)(ii)
- This shall not apply to a written or internet application or other document requesting commonwealth funds §708(b)(10)(iii)(Grant Requests)
- This section does not apply to public opinion surveys or other such research designed to measure public opinion §708(b)(10)(iv)
- Trade Secrets or Confidential Proprietary Information. §708(b)(11)
- Working papers or notes prepared by or for an agency employee for that person's own personal use, including message slips, routing slips, and other materials that do not have an official purpose. §708(b)(12)
- Records that would disclose the identity of an individual who lawfully makes a donation is to providing remuneration or personal tangible benefit to a named public official or employee, this includes lists of potential donors and their personally identifiable information. §708(b)(13)
- Unpublished lecture notes, manuscripts, articles, creative works in-progress, research material and scholarly correspondence of a community college or a

PASSHE institution of faculty member, staff, guest speaker, or student.

§708(b)(14)

- Academic transcripts §708(b)(15)(i)
- Examinations, examination questions, scoring keys or answers. This shall also include licensing and other examinations given in primary, secondary, and higher education. §708(b)(15)(ii)
- Police investigatory records, blotter information is still public record. §708(b)(16)
- An agency investigation does not include fine or civil penalty §708(b)(17)
- 911 calls and radio transmissions unless the public interest outweighs the interest of non-disclosure §708(b)(18)
- DNA & RNA records §708(b)(19)
- Drafts minutes of any agency meeting until the next regularly scheduled meeting is held §708(b)(21) minutes of an executive session §708(b)(21)(ii)
- The contents of real estate appraisals made for acquiring an interest in real property, purchase of public supplies, and construction projects, until a decision is made, then the information becomes public §708(b)(22)
- Library and archive circulation and order records of an identifiable individual or group §708(b)(23)
- Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution. §708(b)(24)
- A record of an archeological site or endangered plant or animal if not already known by the general public §708(b)(25)

- A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of an agency proposal evaluation committees established under the Procurement Code §708(b)(26)
- Communication between an agency and its insurance carrier. This does not apply to the actual contract §708(b)(27)
- Information identifying an individual who applies for or receives social services §708(b)(28)
- Correspondence between a person and a member of the General Assembly that request some form of constituent services. This does not apply to correspondence from lobbyists §708(b)(29)
- A record identifying that name, address, or date of birth of a child 17 years of age or younger §708(b)(30)
- Financial records - The exception in subsection (b) shall not apply to financial records except that an agency may redact that portion of a financial record that is protected under (B)(1)(2)(3)(4)(5)(6)(16)or(17).

### **Procedure**

Every public agency must have a designated Open Records Officer. An agency can create its own Right to Know form or use a Uniform request Form created by the Office of Open Records. A requester can file a Right to Know request in four ways:

1. Fax
2. Electronic Mail
3. In person
4. U.S. mail

An agency has five business days to respond in writing to:

1. Grant the request
2. Deny the request citing the legal basis for the denial/partial denial
3. Invoking a 30 day extension based on one or more of the following
  - a. Off- site location of records
  - b. Staffing limitations
  - c. Need for legal review or redaction
  - d. Complex request
  - e. Requester did not pay applicable fees as required
  - f. Requester did not follow agency policy

If agency fails to respond to a request in the designated time, then the request is considered denied and the requester has the right to file an appeal with the OOR.

If an agency denies a record or a portion of a record, then the requester has 15 business days after receiving the agency response to file an appeal with the OOR

The OOR has 30 days from the date of the receipt of the appeal to issue a final determination which is binding with the requester and the agency. A final determination can be appealed by either party to an appropriate court within 30 calendar days of the OOR's final determination (P.L. 6, No. 3).



**Fees**

The Right-To-Know Law imposes a civil penalty of up to \$1500 if an agency denies access to a public record in bad faith and up to \$500 per day when an agency does not promptly comply with a court order to release records under the act. An agency can be required to pay attorney's fees if an agency denied a record request based on an unreasonable interpretation of the law or acted in bad faith. If a requester's appeal is determined to be frivolous then the requester can be required to pay attorney's fees.

An agency cannot charge for the time it takes to redact a document or the legal review needed to determine if a document is a public record. A pre-payment may be required if the fees are expected to exceed \$100. An agency may withhold public records if the requester has not paid for previous requested records (2008, P.L. 6, No. 3). The Office of Open Records has currently established a fee for a standard 8 ½ x 11 document of up to \$0.25 per page.

The Office of Open Records has faced conflict since the Right-To-Know Law was enacted in 2009. Surprisingly, some of the resistance came from the Administration of the Governor who signed the Right-To-Know Law into effect – Edward Rendell. Ms. Mutchler, in a letter written to Mr. Rendell in the Spring of 2009, expressed concern how “some (state) agencies...are using the Right –to-Know law as a shield with which to block information rather than a tool with which to open records of government.” At the direction of the governor's Office of General Counsel, state agencies were instructed not to speak with Ms. Mutchler or any open- records requests on appeal to her office. (Couloumbis, 2009).

Kim de Bourbon, executive director of the Pennsylvania Freedom of Information Coalition said “there are many provisions in the new law that are problematic simply because they remain open to interpretation, It’s going to be years before some of these provisions get worked out in the courts – or until enough of a stink is raised that legislators get back into the law and do something (Silver, 2009).

The first year that the Right-To-Know Law was in effect, 2009, the Office of Open Records received 1159 appeals, the breakdown included 1047 requests from citizens, 88 requests from the media and 24 from government officials. Local agencies accounted for 815 of the appeals, while 344 appeals were filed against state agencies. School districts, with 29% of the total, had the most appeals filed against them of any local agency. The Office of Open Records issued 596 Final Determinations in 2009, with 70 of the Final Determinations involving local agencies being further appealed to Courts of Common Pleas across the state. Additionally, 40 appeals were filed with the Commonwealth Court that involved state agencies (OOR, Annual Report 2009).

In the first year of implementation also found that Pennsylvania’s judicial system heard 70 Right-To-Know Law cases that involved local agencies, some of which involved public school districts. The court decisions began to shape the Right-To-Know Law.

The demand for records increased in Pennsylvania in 2010 based on the number of appeals filed with the Office of Open Records. The agency received 1727 appeals that included over 500 attempts to appeal were returned due to timeliness or insufficient filing issues. The Office of Open Records issued 1227 Final Determinations, which 1105 were filed by citizens. Local agencies (918) had three times the number of appeals than state

agencies (309). Similar to 2009, school districts once again had the most appeals filed against them (24%) than any other local agency. Over 80 of the Final Determinations were appealed to the Courts of Common Pleas. At least 66 appeals were filed with the Commonwealth Court which appealing Courts of Common Pleas decisions or Final Determinations involving state agencies. The Pennsylvania Supreme Court began to see cases involving the Right-To-Know Law as 13 cases were filed (OOR, Annual Report 2010).

The increased number of appeals and the large amount of cases working their way through the judicial system began to impact the effectiveness of the Office of Open Records. Executive Director Mutchler wrote in the 2010 Annual Report:

The growing success of the RTKL combined with the public's increased understanding of the Law has come at the price of an ever increasing workload. Already understaffed, the OOR saw a staggering workload increase; we handled over 1700 appeals, over 10,000 inquiries and conducted scores of trainings. The appellate workload topped 130 cases at all levels of the judiciary. This pace cannot be sustained without additional staff and funding. Thus, we stand at a crossroads... In addition to staffing, one of the key aspects that must be addressed is enforcement. If an agency denies records, and the OOR orders release, some agencies simply refuse to obey the Order. This leaves citizens in a pre-2009 conundrum; go to court or forget the request. This issue must be resolved or the RTKL process risks becoming a meaningless exercise. (p.3)

The third year of the implementation of the Right-To-Know Law highlighted many problems with the original legislation that were brought to light by the Office of

Open Records, court decisions and the Penn State scandal. In 2011, the Office of Open Records received 1772 appeals which was a 30% increase from 2010. Local agencies accounted for 1271 of the appeals, with school districts, once again, accounting for the most appeals with 23%. For the first time the Office of Open Records delineated the difference between citizen requests and prisoner requests. Inmates represented 6% of the nearly 80% of citizen appeals (OOR, Annual Report 2011, pp. 3, 4).

Approximately 67 appeals of Office of Open Records decisions were filed with the Courts of Common Pleas. An additional 61 appeals were filed with the Commonwealth Court either appealing Court of Common Pleas decisions or Office of Open Records Final Determinations. Nine appeals were filed with the Pennsylvania Supreme Court. As of December 31, 2011 there were 17 matters pending before the Supreme Court and 49 before the Commonwealth Court. Concurrently, there were 134 appeals pending in the Courts of Common Pleas (p.15).

A Commonwealth Court case decided in 2011 significantly altered how the Office of Open Records handled appeals. In *Department of Corrections v. OOR* (2011) the Court ruled that when a requester appeals an agency's denial of a request for records, the appeal must specify any defects in the agency's stated reason for denial. If this is not done, then the Office of Open Records must dismiss the appeal. The panel of three judges said the law didn't require citizens to prove a record should be public -- merely to "identify flaws in an agency's decision to deny a request." The court stated that such a requirement isn't "particularly onerous" even for those who don't have a lawyer. As a result, "the OOR has been forced to dismiss hundreds of appeals" (OOR, Annual Report 2011, p.16). Office of Open Records Director Mutchler said the court's decision could

have "left a little bit more breathing room for the spirit of the law." Since the decision was handed down, her office has dismissed 30 percent of citizens' appeals. "A citizen almost has to be a lawyer [now] to have a case reviewed by us. If they don't have the necessary requirements to get in the door, we can't take the case" (Heidenreich, 2011).

The child abuse scandal at Penn State in 2011 brought much attention to Pennsylvania's Right-To-Know Law in general and the Office of Open Records specifically. Being defined as a state-related institution, and being exempt from many of the provisions in the Right-To-Know Law, allowed Penn State administrators to deny multiple right to know requests. Subsequently the denials led to appeals to the Office of Open Records. "While Penn State, and other state-related institutions are not subject to the law, the OOR still, by law, had to process any appeals that were filed seeking records of Penn State increasing the OOR's workload to an even greater dimension than anticipated by the law" (OOR, Annual Report 2011, p.3).

In the months that followed the scandal involving Penn State, many state legislators introduced bills to include Penn State and the other state-related institutions under the Right-To-Know Law. Other proposals were also introduced by legislators to amend the Right-To-Know Law based on case law or other continuing issues. Despite the uproar of the Penn State case, and the challenges experienced by the Office of Open Records and the judicial system, the state legislators took no action on revising the Right-To-Know Law when their term ended on June 30, 2012.

According to Michael Berry, vice president of the Pennsylvania Freedom of Information Coalition, two issues plague the implementation of the Right-To-Know Law that are more problematic than the state-related institution exemption. Berry, who is also

a First amendment Attorney, states that the exceptions in the Right-To-Know Law involving investigations are flawed and help agencies restrict records even further:

The first investigation exception is supposed to serve the commonsense goal of not revealing ongoing criminal investigations. But the law sweeps far more broadly. It shields not only investigative records themselves -- like notes taken by a detective and evidence collected by police -- but also hides any document "relating to" or "resulting in" a criminal investigation. The second investigation exception protects records "relating to" noncriminal investigations. Again, this exception's scope far exceeds its laudable purpose. Not surprisingly, the law covers the identity of whistleblowers and auditors' work papers. But, it also seals all complaints submitted to agencies, demands that the "results" of investigations be kept secret and ensures that "reports" of government investigations remain hidden. (2012)

In *Edinboro University of Pennsylvania v. Folletti* (2010/2011) Commonwealth Court president Judge Dan Pellegrini said that “ever since the new open records (came) in, state agencies have been stonewalling records, just have made it a practice – not in all instances; that’s a little bit broad, but they have made challenges. This was supposed to expand open access”.

When Tom Corbett campaigned for Pennsylvania Gubernatorial position in 2010 he pledged to “provide an open, transparent, accountable and trustworthy government... and (implement) 100 percent transparency throughout state government”(Corbett website, 2010). However, in a situation that mirrors his predecessor, Governor Corbett’s administration has been embroiled in many issues involving open records and the Right-

To-Know Law in 2012 which has led Office of Open Records Director Mutchler to say that “the Corbett administration is being neither, open or honest...I wait for the day when Pennsylvania will be leading the pack in opening government to its citizens as opposed to closing it.” Seemingly the Right-To-Know Law has become a victim of partisan politics as Governor Corbett’s office responds that Mutchler “is a Rendell appointee, so the fact that she has disagreements with the Republican administration should not surprise anybody. ... If she wants a difficult relationship, that’s on her” (Murphy, 2012).

Despite the intent of Pennsylvania’s Right to Know Act of 1957 of creating a more transparent government, the Act quickly became open to judicial interpretation; see *Wiley v. Woods* (1958), which led to an inconsistent application of law by government agencies. Harmon (2008, p.95) found that “the failure of government agencies to consistently apply the Act, and a general unfamiliarity with the Act among Common Pleas Judges, often led to contradictory case law, thereby further complicating the Act’s application.” In many instances it has been used by (government) agencies to shield their records from public view. Many officials who opposed disclosure took advantage of the vague terms and definitions in the Act to fashion their own interpretations (Drexler, 1994, p. 130). Pennsylvania legislators significantly revamped the Right-To-Know Law in 2008, fifty years after it was first enacted. Obviously, the fifty years between legislative acts included immeasurable growth in how technology was implemented by government agencies and how records were created, stored and transmitted. As a result of the lack of a comprehensive and up to date open records law, Pennsylvania government and its’ public agencies, garnered the reputation of being less transparent than other states.

The Better Government Association (BGA), according to its website, “promotes reform through investigative journalism, civic engagement and advocacy. We're a watchdog -shining a light on government and holding public officials accountable” (2012). The BGA is headquartered in Chicago, Illinois and has focused much of its investigative work in the Chicago area. However, within the past decade, BGA has sponsored three different studies that examined the freedom of information acts of all 50 state governments and the District of Columbia. In all three studies, Pennsylvania government did not fare well. All three studies were conducted before Pennsylvania’s revised Right-To-Know Law went into effect on January 1, 2009.

In 2002 BGA joined with the Investigative Reporters and Editors (IRE) to analyze the text of each state’s freedom of information law. Case law in each individual state was not considered as it was believed that the typical citizen would refer to the statute for guidance and not a judicial opinion.

Each state was compared to each other using five criteria. Three of the criteria involved procedural aspects of obtaining public records in each state, while the other two criteria reflected the penalty, if any, that are levied against an agency that wrongfully denies access to a public record. Each state statute contained some sort of exemptions which were not factored into this study.

In assessing the procedural criteria, BGA was concerned “that a lengthy and burdensome process is likely to discourage citizens from making requests and seeking enforcement of the statute, which will result in less disclosure of public information” (p.2). Each criterion was assigned a value of up to 5 points, with 5 reflecting an exemplary freedom of information provision. When no statutory provision was detailed



for a designated criterion, the state received a grade of zero points for that criterion. A total of 25 points was possible.

The first criterion evaluated was the response time an agency has to make an initial response to a request for a record. BGA believed that “statutes that provide for very long response time, or do not provide a stated response time at all, do not create any statutory assurances for a requester, such as a journalist, who is seeking a time sensitive document (p. 2). Pennsylvania’s Right to Know Act of 1957 did not contain a definitive response time and received a grade of zero points for this criterion.

The second procedural criteria involved the appeal process that a citizen could choose if they were to be denied a record that is covered by the statute. “If citizens are able to appeal in a cost and time efficient manner, in the forum of their choice, citizens are more likely to challenge an agencies denial... Citizens are less likely to challenge a denial if appealing means several years of litigation costing of thousands of dollars” (p.3). Pennsylvania did allow for an appeal to court if a record request was denied and received a grade of one point for this criterion.

If a record was denied, did the requester, by statute, have the right to have their case expediated due to possible time constraints? The BGA recognized expediency as its third criteria because “without expediency, litigation may serve as a tool to stall the production of records until the records are no longer of use, or until the citizen simply gives up on the request” (p. 4). A lengthy court case would also create a substantial cost for the requester. The Pennsylvania Right-To-Know Law did not address how quickly an appeal would be heard and received zero points for this criterion.

In order to gauge the enforceability of the statute, BGA studied the penalties that are levied against an agency that did not provide a public record. The first penalty criteria examined in this study involved the payment of attorney fees and court costs as detailed in the statute. The awarding of such fees “assures petitioners that their expenses will be covered in the event they are successful in their appeal, encouraging people to challenge an agency’s denial. Also, awarding fees and costs to the prevailing petitioner will provide a deterrent to agencies and promote compliance with the law” (p.5). Pennsylvania did not allow for attorney’s cost or court fees in its statute and received a grade of zero points for this criterion.

States were graded on the final criteria on whether the statutes included penalties against agencies that was found by a court that violated the law. “Without a sanctions provision, a public records statute means very little. It is only when an agency is punished for breaking the law that the law will be complied with” (p.6). The Right to Know Act did not include a penalty against a non-complying agency and received a grade of zero points for this criterion.

In 2002, in a BGA-IRE study of freedom of information statutes of all 50 states, found that Pennsylvania lagged far behind other states in terms of open records legislation. Pennsylvania received one point of out of a possible 25 total points. The letter grade associated with this point total was an F and Pennsylvania was ranked 48th of all states. Nebraska ranked first with a total of 20 points (IRE, 2002).

The Pennsylvania legislators did address some areas of weakness in amending the Right-To-Know Law in 2002 including implementing a response time, addressing attorney and court fees and instituting a penalty for those individuals who willingly deny

a request for a public record. The revised Right-To-Know Law, however, continued to place the burden of determining whether a record is public on the requester ( P.L. 663, No. 100).

BGA, in conjunction with the National Freedom of Information Coalition (NFOIC), once again studied the freedom of information statutes in all 50 states in 2007. Charles N. Davis, executive director of the National Freedom of Information Coalition, said “This national study shows that in the vast majority of states, citizens have little to no recourse when faced with unlawful denial of access under their state's FOI laws. It's a cry for reform of FOI laws nationwide" (2007, p.1). The NFOIC, as is the IRE, is based at the University of Missouri School of Journalism.

The BGA-NFOIC study used the same criteria that were used in the 2002 study. In this study, criteria were assigned points based on a weighted grading scale. In the opinion of the surveyors:

Three of the criteria—Response Time, Attorney's Fees & Costs and Sanction—were worth four points each. Two of the criteria—Appeals and Expedited Process—were assigned a value of two points each. Response Time, Attorney's Fees & Costs and Sanctions were assigned a higher value because of their greater importance. They determine how fast a requester gets an initial answer, thus starting the process for an appeal if denied, and provide the necessary deterrent element to give FOI laws meaning and vitality. Appeals and Expedited Process, although important, are not as critical in vindicating the rights of citizens and journalists who are trying to keep a close eye on government operations. (2007, p.1)

As a result of the changes of the Right-To-Know Law in 2002, Pennsylvania ranking improved significantly in BGA's 2007 study of the 50 states. Pennsylvania's results and criteria of the BGA/NFOIC survey:

|                    |               |
|--------------------|---------------|
| Response Time:     | 3 out of 4    |
| Appeals:           | 1.5 out of 2  |
| Expediated Review: | 0 out of 2    |
| Fees:              | 2 out of 4    |
| Sanctions:         | 2 out of 4    |
| Total:             | 8.5 out of 16 |

Pennsylvania's grade converts to a grade of 53% which, similar to the 2002 study, translates to a grade of F according to the BGA. However, despite the poor letter grade, Pennsylvania jumped to 22nd on the state rankings. Despite the jump in rankings for Pennsylvania, it was obvious that there continued to be issues with the state's freedom of information laws. BGA Executive Director Jay Stewart detailed that "no state earned better than Nebraska's and New Jersey's 14 out of a possible 16 total. A stunning 38 states earned F ratings, with the rest scattered between C and D. The results are dismal, the details depressing even to hardened FOI observers who knew the national situation was grim" (NFOIC,2007).

BGA, sponsored by a Chicago insurance firm, Alper Services, conducted a more in depth survey in 2008. Once again the survey studied the freedom of information laws in the 50 states; also, whistleblower laws, campaign finance laws, open meeting laws and conflict of interest disclosure laws were analyzed and graded.

The freedom of information grade for Pennsylvania grade did not change from the 2007 study. BGA decided to analyze open meeting laws as well since ‘it directly impacts on the transparency of government’ (2008, p.4). The freedom of information law and the open meeting law directly impact public school districts in Pennsylvania.

In terms of open meeting laws, BGA studied four criteria that related to public information. BGA chose these criteria because “vague notices and/or meeting minutes that are released in a less than expeditious manner will severely undercut the public’s ability to understand what public bodies are doing in a timely fashion” (p.23). The four criteria included:

1. Annual Notice
2. Timing of Regular Meeting Notice
3. Content of Regular meeting Notice
4. Timing of Minutes Publication

BGA studied two procedural criteria in terms of open meeting laws:

1. Time Frame For Lawsuits
2. Expediated Process

The final set of criteria focused on the penalties allowed by the open meeting laws because “without strong penalties an Open records Act is of limited usefulness” (p.25):

1. Attorney fees and costs
2. Sanction

Pennsylvania ranked 43<sup>rd</sup> out of 50 states by the BGA in the study of Open Meeting laws in 2008 (BGA, 2008). In 2011, the Pennsylvania legislators approved an increase in penalties to those individuals who violate the state's Sunshine Law.

### **Suggested Improvements to Open Records Legislation**

In the Better Government Association's (BGA) 2002 study of all 50 states open records legislation, no one state had an all-encompassing, effective Right-To-Know Law. Based on its research, BGA created a 'Model Open Records Act' which the organization feels would create truly transparent government agencies:

**Response time.** An agency that receives in writing a request to examine any public records shall respond to such a request within seven working days. The response shall either communicate that access to the record will be granted or that access is denied.

**Appeals.** Upon any denial of access to a government record, the requester may appeal that denial to any of the following: the district court of competent jurisdiction, an open records commission, the Attorney General or the head of agency that has denied access.

**Expediency.** A matter on appeal to a district court from a denial of access to a record shall be expedited on the court's docket and heard within seven days.

**Attorney's fees & costs.** A petitioner who prevails or substantially prevails in a court of law against an agency that has denied access to an open record shall be awarded the costs of litigation and attorney's fees.

**Sanctions.** Any person who is found in a court of law to have violated the statute may be subject to: A civil fine of \$1,000 for the first offense, increasing with each

subsequent offense; and shall be guilty of a misdemeanor punishable by a fine or 90 days in jail or both, and may be subject to termination (2002, p.6).

Shortly after Pennsylvania's Right-To-Know Law was signed into effect, Attorney Joshua Harman (2008) analyzed the open records laws in other states and compared it to the new Right-To-Know Law. Harman concluded:

The experience of other states does not provide a clear directive for how the Office of Open Records should operate; each state has its own unique laws, and each state judiciary has its own unique approach to administrative decisions. However, the courts in most states do appear willing to defer to an administrative body when it comes to filling in the statutory gaps. Even where this is not the case, the independent agencies fulfill an important role by keeping easy cases out of the courts, reducing the chance of contradictory rulings, and allowing judges to focus on the more difficult issues... The new Right to Know Act undeniably represents a dramatic shift in Pennsylvania's open records law. For 50 years, the Pennsylvania courts have looked to past precedent to resolve open records disputes. Requiring them to look to a new administrative agency will not be a smooth process. The Office of Open Records must take an early and active role in shaping the new law's development if it hopes to get out from under the years of judicial intervention, and to avoid being marginalized by its jurisdictional limitations... The review of other states makes clear that the courts are the ultimate decider of open records issues. Should the Office fail to quickly establish itself as an independent and knowledgeable body that courts should defer to out of respect for the strength

of its reasoning, the Office will run the risk of deciding only the easy cases and having no role in the hard ones....The new Act is as much a codification of existing common law as it is a full scale rewrite of the law. How this fact will shape the Act's development should be one of the key considerations for the new Office of Open Records. (pp.124. 125)

Stewart (2010) reviewed both open records laws and open meeting laws across the United States. "On paper, the remedies available for people who have been unlawfully denied access to public meetings or records appear to provide some teeth to back the public policy goals of open records" (p.298). However, in reality, open record laws are flawed and almost impossible to enforce. He proposes three courses of actions jurisdictions can take to address the flaws in the freedom of information laws:

### **Inconsistency in the Open Government Laws**

Analysis of the enforcement mechanisms shows that the laws are inconsistent, not only from one jurisdiction to another, but also between public records and open meetings laws within jurisdictions. Stewart (2010) stated:

While the statements of policy in open government laws are most often made very clear -- that people in a democracy have a right to know how their elected and appointed officials engage in public business -- the ways in which jurisdictions try to ensure compliance with these laws is haphazard. (pp.298, 299)

### **Weakness of Incentives and Disincentives**

Even with more consistent laws, those deprived of access to meetings and records that should be open under the law could reasonably be reluctant to sue



following a denial, especially with mounting legal fees that they may not be able to recoup under the law. The time and effort involved in challenging a denial may not be worth it, either for citizens or members of the news media. Civil and criminal fines are available, but they are generally low (p.300). Government employees may be more concerned about retribution at work for releasing a public record than a penalty for denying access. Mark Anfinson, a media law attorney who represents the Minnesota Newspaper Association describes “an ‘institutional anxiety bordering on fear’ by government employees who believe they are more likely to get in trouble for wrongfully allowing access to something than they are for wrongfully denying access” (p.303).

Similar to the Right-To-Know Law, FERPA has also allowed educational agencies to deny records to the public without the fear of penalty. Silverblatt (2013) proposes, with respect to FERPA, “that institutions...face penalties not only for undercompliance with FERPA, but also for overcompliance” (p. 517). He believes that FERPA should have the same penalties for Universities as the Clery Act, which tied reporting of campus crime to financial programs.

### **Alternative Dispute Resolution**

Alternative dispute resolution processes typically rely on problem-solving and neutral third parties to facilitate negotiations between parties in conflict. These are voluntary processes, in that “all parties to the dispute must agree to participate and then must reach a self-enforceable accord in order for the process to work” (Stewart, p.303).

Pennsylvania’s Right-To-Know Law has a mediation process that “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 2011, Pennsylvania’s Office of Open Records took part in seven mediations which resulted in two being successful (OOR, Annual Report 2011, p.20). “If the traditional system of litigation and adjudication continues to fail those hoping to vindicate the public's right to know, other systems should be considered as more productive, more efficient, and more satisfactory ways to handle open government law disputes in the future” (Stewart, 2010, p. 304).

### **Relevant Research**

The Right-To-Know Law was enacted in 2009 in reaction to the perceived demand for more government transparency. The Right-To-Know Law legislation was hailed as a dramatic shift on how Pennsylvanian’s could access the inner workings of their public agencies. However, the Right-To-Know Law, as with almost all reactionary legislation, has encountered many problems since its implementation. “These legal interventions in local operations have generally failed to secure the dramatic results their proponents expected. And the cost to federal, state, and local institutions, and ultimately to the public, has been high” (Berman, 1981, p. 46). Despite the problems that have arisen with the Right-To-Know Law, and the checkered history of what Berman calls ‘legally – induced reform,’ Open Records Officers (ORO) at Pennsylvania’s public agencies, including school districts, are expected to understand and implement the law as it is written.

One way to improve or enhance any piece of legislation is to get input from those who are responsible for its implementation. There is limited documentation of how the

Right-To-Know Law is perceived by the Open Records Officer responsible for releasing agency records to the public. The perceptions of record access professionals from around the country were evaluated in a 2012 study. The professionals found that they felt like they were often considered a foe of the person making the record request (p. 320). The results show that while access professionals strongly support the philosophical underpinnings of transparency, they do not apply that same appreciation to citizens who seek access to information (p.299). As with almost all of the few studies that have been conducted concerning open records access, the need for training of both the professionals and the public seems to be a glaring need (Kimball, 2012).

With the lack of research that gauges the perceptions of a public agency's Open Records Officer, another avenue to consider the effectiveness of open record laws is to examine studies that have been conducted that have actually requested records. Very few studies exist that exclusively document the response and understanding a public school district has in regards to their responsibility about releasing records to the public. Documented audits of a limited number of school districts have been performed as part of larger studies that included other Pennsylvania public agencies such as municipalities, police records and 911 logs.

In 2005, the *Philadelphia Inquirer* took part in a survey in conjunction with the Associated Press which sought records from 700 agencies across Pennsylvania. Record requests were in conjunction with the 2002 version of Pennsylvania's Right-To-Know Law. The results showed that nearly 50% of the requests were met within a few days, "though in some cases only after participants had identified themselves as journalists." Specifically, school districts were asked to release the superintendent's employment

contract. The study found that “police and school officials were among the least compliant: Of 217 police agencies surveyed, about 40% denied access to call logs or incident reports, while only 67 of 130 school districts turned over the superintendent’s employment contracts” (Prichard, 2005). The 2002 Right-To-Know Law specified deadlines for agencies to meet right to know requests as well as not requiring a requester to identify the reason for the request.

A similar audit was performed by the *Altoona Mirror* in 2007. The newspaper petitioned all 501 school districts in Pennsylvania for the release of the district Superintendent’s contract. Over 11% of the school districts failed to respond to multiple requests for the contracts (Young, 2007).

After the implementation of the revised Right-To-Know Law in 2009, the Associated Press in conjunction with numerous media outlets, conducted a right to know audit of 274 requests for five types of records: grant applications, 911 logs, school superintendent contracts and job application resumes of public employees. Full access to the records occurred in 208 cases and partial access occurred in 24 others. The report did not differentiate the compliance rate of each individual public agency, but it did state that requesters were given access to the information they sought about 85 percent of the time – “a clear improvement over similar surveys in 2005 and 1999, in which the failure rate in both years was about 30 percent. However, the three surveys do not allow a precise comparison, because each employed different methods, different records were sought and they were conducted under different versions of the Right-to-Know Law, which was amended in 2002 and again last year” (Scolforo, 2009).

A few other studies have occurred that have not involved Pennsylvania open records laws that impact this study. In 2004, the Ohio Coalition for Open Government sponsored an audit of 528 records from local agencies spread out over all of Ohio's 88 counties. The records requested county minutes, executive expense reports, police chiefs pay, police incident reports, as well as two requests that targeted school districts - superintendent's compensation and school treasurer phone bill. Overall, record requests were granted 50% of the time on the same day the record was requested.

Specifically, school districts fared worse. Of the 84 school districts where auditors were not recognized as members of the news media, 41 districts refused to provide records of the superintendent's compensation and 19 granted it conditionally or partially. Of 85 valid responses to requests for the treasurer's monthly phone bill, 43 districts denied access and 17 granted it conditionally or partially (p.8). The study summarizes that the poor audit results are due to a lack of proper training of the open records officers of public agencies. The study found that the Ohio School Boards Association and the Buckeye Association of School Administrators were both misinformed about Ohio's Open Records law. The former chief counsel of Stark County, Paul Mastriacovo said:

Clearly education (training) is good, but you can't make them go to a seminar and you can't make them learn when they're there. Sometimes officials violate the law, believing the applicant won't sue, which makes it vital the public enforces its rights. (p.4)

A 2003 study of Florida Open Records custodians audited the record of law enforcement agencies. Although the study did not include school districts, it did give insight in to process the open records custodians followed to grant or deny record

requests. The study found that the lack of training, standardization, legal support and enforcement created an environment where requesters of public records were denied (Kimball, 2003).

Kimball (2012) also performed a study of the perceptions of open records custodians from across the United States. They were in charge of the records of public safety organizations. Kimball found, at least with full-time Open Records Officers, that “the frustrations access professionals experience are generally with practical matters, rather than with the philosophy of access to government information” (p.322).

A 2010 study requested the superintendent's contract from every school district in Arizona. The districts were divided into three groups. One group received a request that was considered 'nicely' written. One group received a request letter that was considered neutral and the last group received a request letter that was considered mean and threatening. The researcher found that the threatening letter was more effective in eliciting a response from agencies and actual acquisition of the records. The results also indicate that the stern, legalistic letter prompts a faster response. However, the friendlier letter was more likely to spur agencies to go beyond their minimum legal duties, resulting in some officials emailing the records for free rather than mail the records for cost (Cuillier, 2010, p.224).

The Right-To-Know Law, especially in public educational institutions, is often perceived to be in direct conflict with the federally implemented FERPA. However, educational institutions often use FERPA and the privacy exemptions of the Right-To-Know Law to block record requests. In a 2010 study, The Columbus Dispatch requested records from the 119 Division 1-A College football teams to see how the universities

were applying FERPA. The requests sought airplane flight manifests for football-team travel to road games; lists of people designated to receive athletes' complimentary admission to football games; football players' summer-employment documents; and reports of NCAA violations. Only three universities replied to the requests without censoring any information, the other schools, citing FERPA, redacting information or refused to release the records. "The current interpretation of the law gives schools wide latitude to decide what is and isn't public within nonacademic records. At one school, an 'education record' is a document disclosing student grades and coursework, while at another, any document containing a student's name is deemed an 'education record'" (Riepenhoff & Jones, 2010). Riepenhoff & Jones quote former Senator James Buckley, the author of FERPA in 1974, who said "that's not what we intended. The law needs to be revamped. Institutions are putting their own meaning into the law." Interestingly, Penn State was one of eight institutions that refused to release any records in response to the record request.

### **Transparency vs. Students' Privacy Rights**

Unlike other public agencies funded by tax money, public school districts have federal safeguards in place that protect records that may otherwise be considered public. The Family Educational Rights and Privacy Act (FERPA) was enacted in 1974 which requires schools to enact and enforce policies to safeguard the confidentiality of students 'educational records' (20 U.S.C. § 1232g). FERPA is also known as the Buckley Amendment as Senator James Buckley introduced the legislation in response to the "growing evidence of the abuse of student records across the nation" (1975, 121 Congressional Record 13,990). FERPA addressed two of Buckley's main concerns:

giving parents the right to inspect and correct their child's records, and providing a consistent policy that would regulate how third parties are given access to educational records. Just as the Right-To-Know Law, with its 30 exemptions, can be used as a shield to deny records requests, critics believe that FERPA is used in a similar manner. School districts (and Universities) have often denied records being publically released because the record may contain or reference a student's name. "One of the most egregious defects of the Buckley Amendment is its prosperity to allow [educational institutions] the wherewithal to manipulate the law, thereby protecting the institution while giving the appearance of protecting student privacy" (Salzwedel & Ericson, 2003, p. 1097). Courts across the country have dealt with defining the term 'educational record' under FERPA. In *Kirwan v. The Diamondback* (1998), a Maryland Court of Appeals attempted to define what constitutes an educational record:

[FERPA] was not intended to preclude the release of any record simply because the record contained the name of a student. The federal statute was obviously intended to keep private those aspects of a student's educational life that relates to academic matters or status as a student. (1998)

Many states, including Pennsylvania's Right-To-Know Law, have penalties in place that penalize agencies or institutions that willfully deny a request for a record. However, the penalties seemingly are meaningless in Pennsylvania as there have been no judicial awards for an agency acting in bad faith as of July, 2012 (Byerly & Schnee, 2012). Silverblatt (2013) surmises that:

At the state level where penalties often require heightened culpability it is virtually impossible for a judge to find subjective bad intent when an institution



can plausibly claim that it was merely concerned with the privacy of its students when it asserted. FERPA (p.493)

The privacy provisions of FERPA seem to be in conflict with the transparency as prescribed by open record laws. Specifically, Pennsylvania's Right-To-Know Law can be viewed as being in direct conflict of FERPA. McGee-Tubb (2012) details the conflict as it pertains to state run universities:

A significant tension arises between two core democratic concepts--individual privacy and the public's right to know about the government's activities--in the context of public universities. Students' records, which are maintained by public universities as state actors, contain grades, disciplinary proceeding reports, and an array of other information that a student or the university may desire to keep private. These records often contain the very information that news media seek in order to expose questionable university practices or policies and to hold public universities accountable to the public. Given these competing interests, states and the federal government have passed regulatory schemes that protect student privacy yet provide public access to the records of state actors (p.1051).

Pennsylvania's Right-To-Know Law does have a provision (Section 305) that allows for disclosure exemptions if covered under federal law. Therefore, the requirements of FERPA supersede the Right-To-Know Law. For Pennsylvania school districts, protecting the privacy of records that include student information is in direct conflict with the intent of the Right-To-Know Law. This clash between individual privacy and the transparency movement is perhaps one reason why school districts historically have the most appeals filed against them with the Office of Open Records.

### **Privacy and Control**

Most people enjoy some levels of privacy. However, social media has stretched the bounds of individual privacy as people post many aspects of their personal life online. The eroding of the right to privacy has also leaked into the workplace as employees, especially public employees, are subject to a heightened level of transparency and accountability. Helen Nissenbaum (2010) states that “we all have a right to privacy, but it is neither a right to control personal information nor a right to have access to this information restricted” (p.231). Nissenbaum envisions a harmonious balance between one’s social life with moral and political purposes. However, because of the constant need for information in today’s society, this balance is impossible to achieve according to Nissenbaum:

This is never a static harmony, because over time, conditions change and contexts and norms evolve along with them. But momentous changes –war, revolution, famine, (scandal) – may cause asynchronicities between present practices newly jarred by discontinuities and expectations that have been evolving incrementally and not kept apace. We are living through one such discontinuity, neither as cataclysmic nor as stark as war or famine, but disruptive nevertheless. The rapid adoption and infiltration of digital information technologies and technology-based systems and practices into virtually all aspects of life, to my mind, have resulted in a schism, many schisms, between experience and expectation. Where a schism has resulted in a radical change in the flows of personal information, it is experienced and protested as a violation of privacy (p.231).

Discontinuities and schisms have always existed, especially as the dissemination of information has evolved. Louis Brandeis wrote in 1913 that “publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman” (p.10). Brandeis, who was appointed to the Supreme Court in 1916, recognized the need for publicity to be a catalyst for changing societal problems, however he, along with Samuel Warren, also understood the right of an individual to maintain their privacy and “to be let alone.” In response to yellow journalistic stories on Warren’s private life, Brandeis and Warren published “The Right to Privacy” in 1890. What they wrote then is also applicable in today’s society of instant news and social media:

That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the new demands of society (p.193)...the right to privacy does not prohibit any publication of matter which is of public or general interest. (p.214)

In the current environment demanding a more open and transparent government, public agencies, specifically the employees of public agencies, must balance their “right to be let alone” with the public’s right to know. Warren and Brandeis (p.214) recognized that balancing individual freedoms with public interest was difficult: “to determine in advance of experience the exact line at which the dignity and convenience of the individual must yield to the demands of the public welfare or of private justice would be

a difficult task.” As Thomas Jefferson stated public employees become “public property” and their “peculiarities of manner and person, which in the ordinary individual should be free from comment, may acquire a public importance, if found (for instance) in a candidate for public office (Warren & Brandeis, p.215).

O’Brien (1979) also recognized the difficulty in defining the line of disclosure for public employees in the public sector:

The discretion inherent in administrative implementation of policies in general, and the decision-making structures establishing disclosures procedures in particular, is necessary but subject to abuse. Administrative discretion is essential because of the hard cases that require individualized evaluation of interests in personal privacy, disclosure, and agency needs. Yet, administrative discretion often leads to abuses in agencies' collection and maintenance of personal information. Also, this discretion promotes syndromes of bureaucratic secrecy, such a those permitted by the Administrative Procedure Act. (p.222)

The former Executive Director of the Connecticut Freedom of Information Commission, Mitchell Pearlman, feels that denying records goes beyond a government official wanting to maintain privacy or trying to avoid publicity; he feels that denying records is more of a power struggle that reflects the culture. Pearlman states:

Everywhere I go, government information is power. People who control information, even at the level of a clerk, are reluctant to share it because it diminishes their power. Even if their position is innocuous, requesters will be given a hard time. In most jurisdictions, if you go in there and ask and they say, "No, you can't have it," people say thank

you and goodbye. It's the path of least resistance. I think there's a culture of secrecy in any bureaucracy, not just in government but everywhere. Freedom of information laws are intended to legislate against that culture, and it's very hard to legislate against the culture.

(Stewart, 2010, p.303)

Changes in how information is gathered and disseminated have also fueled the transparency and open records movement. Technology has had a significant impact on the culture of obtaining information. Munson et. al. (2012) found that:

Technological advances have great benefits for values of transparency, accountability and democracy; these same advances have disrupted the existing balance among these values and personal privacy. There is strong tension between transparency and individual privacy in the decision to disclose, or not disclose, these records.” (p.112)

### **Information Overload**

On a grander scale, and in the whistleblowing spirit of Yellow Journalism, technology has helped fuel the current WikiLeaks movement where a mass release of secret information is published using the internet. “In a WikiLeaks world transparency comes from direct action rather than from official machinery for releasing or publishing information. Transparency means revealing information that is officially classified or private and thus beyond the scope of FOI” (Hood, 2011, p.635).

Technology has helped Albuquerque, New Mexico to become the recent leader in government transparency according to the Sunshine Review, a web based organization that grades state and local governments on their transparency. Albuquerque received an

A+ grade by going to such extremes as posting the salary of more than 6000 city employees online as well as the city's vendor contracts and expense accounts. The mayor who instituted these measures, Richard Berry, won his campaign on running a 'clean government.' Berry states that concerns about identity theft or employee embarrassment are justified but they take a backseat to public government (The Economist, 2011).

Mayor Berry's viewpoints on open government represent a modern twist of the thoughts of First Amendment advocate Alexander Meiklejohn. Meiklejohn believed that the First Amendment was absolute and that it allowed for the abridging of speech but does not allow abridging of freedom of speech. "The ultimate purpose of the First Amendment is voting. Government should be run like town hall meetings where citizens assemble to discuss matters of public interest—say, schools, defense, roads, health care—and act upon them. Each citizen is free to come and 'meet as political equals' ...each has the right and duty to think her or his own thoughts express those thoughts and listen to others arguments. They then vote. If they fail, it fails" (1948, pp.24, 25).

Meiklejohn's vision of town hall style governance is void of representation as 'people are the rulers and the ruled.'" He also believed that right-to-know is the sole basis of the First Amendment (Emerson, 1976, p.1). However, a government that is truly transparent could undermine the representative political system that has been in place since the Revolutionary Era. Lawrence Lessig, a professor and the director of the Ethics Center at Harvard Law School, observes that the transparency movement, especially in the world of politics, has become 'an unquestionable bipartisan value.' Lessig warns that complete openness, as inspired by Meiklejohn and the WikiLeaks movement, will be chaotic:

How can anyone be against transparency? Its virtues and its utilities seem so crushingly obvious. But I have increasingly come to worry that there is an error at the core of this unquestioned goodness. We are not thinking critically enough about where and when transparency works, and where and when it may lead to confusion, or to worse. And I fear that the inevitable success of this movement – if pursued alone, without any sensitivity to the full complexity of the idea of perfect openness – will inspire not reform, but disgust. The ‘naked transparency movement,’ is not going to inspire change. It will simply push any faith in our political system over the cliff. (2009, p. 37)

Like Lessig, Tsoukas (1997) challenges the theory that “the more human beings know, the more able they will be to control their destiny” (p.828). Tsoukas cites numerous examples in both the United States and United Kingdom that supports her claim that too much information may be detrimental to society. Tsoukas surmises:

A distinguishing feature of late modern societies is the significant extent to which they are dependent on knowledge for their functioning. Contrary to how knowledge was viewed in pre-modern societies, knowledge now tends to be understood as information, that is as consisting of objectified, commodified, abstract, decontextualized representations. The overabundance of information in late modernity makes the information society full of temptations. It tempts us into thinking that knowledge-as-information is objective and exists independently of human beings; that everything can be reduced into information; and that generating ever more amounts of information will increase the transparency of society and, thus, lead to the rational management of social problems. However

...the information society is riddled with paradoxes that prevent it from satisfying the temptations it creates. More information may lead to less understanding; more information may undermine trust; and more information may make society less rationally governable. (p.827)

Merrill (1967) questions whether the general public actually cares about transparency or their right to know about government information. He feels the media cares more about the right to know, “the only segment of our society which seems really concerned about the right is the press- the editors and publishers chiefly. They critique, agitate, and fret about the ‘people’s right to know’ being infringed on by the government” (p.109). Economist Christopher Sims’s theory of ‘rational inattention’ can be applied to the transparency movement as well. Under the rational inattention theory, information is fully and freely available, but people lack the capability to quickly absorb it all and translate it into decisions. Rational inattention is based on a simple observation: Attention is a scarce resource and, as such, it must be budgeted wisely. The general public usually acquires its information from media sources since most people share the need to get information efficiently. The editors and publishers of the newspapers, television and internet news organizations decide what and where any information is published, as influenced by subscribers and advertisers, which helps shape the public’s viewpoint on any given topic. “The newspaper’s information processing can influence the erratic component of behavioral response to data... the treatment that newspapers (and TV) gives (this) news affects the way people react to it, creating a common component to the idiosyncratic error generated by information- processing” (Sims, 2002, p.24). Recent social media trends such as Facebook, Twitter and Instagram also help spread



information which can contribute to and shape behavioral responses that could be prone to error.

### **Effective Policy Implementation**

The Better Government Association repeatedly ranked Pennsylvania poorly concerning open record laws on three different occasions (BGA, 2002, 2007, 2008). Rankings have not reoccurred since Pennsylvania revised its Right-To-Know Law, which went into effect on January 1, 2009. The focus of this study is the perceptions and experiences of the Open Records Officers applying the Right-To-Know Law in Pennsylvania. After survey and other data are analyzed, conclusions will be discussed at a later point in this research paper. Part of the discussion will focus on the effective implementation of the Right-To-Know Law, especially as it pertains to Pennsylvania public school districts. The policy will be analyzed at the state level using Sabatier and Mazmanian's (1980) conditions of effective implementation using the following criteria:

1. Is the policy clear, concise and theoretically sound?
2. Does the policy give the governing body sufficient jurisdiction and leverage to properly implement the policy?
3. Does the governing body receive sufficient funding to perform its required duties?  
Are implementing agencies properly trained to perform the general objectives as outlined by the policy?
4. Are there active constituency groups that support the policy throughout implementation? Do a few key legislators support the policy with the courts being neutral or supportive?

5. Has the Executive priority of the policy faded since its implementation in? Does a change in leadership affect how the policy was enforced or weaken its political support?

Berman (1982) argues that a policy can only be effective if the intricate system of implementation is recognized. His theory will be applied to the Right-To-Know Law as it specifically applies to public school districts in Pennsylvania. Berman surmises that:

The present legalistic web has been spun not by central design, but by uncoordinated drift. Time and time again, in situation after situation, courts, legislators and regulators have promulgated policy without paying attention to how local deliverers of social service could comply...this legal tangle creates numerous problems: extensive and costly delays in implementation, energy - sapping social conflict and frustration. (p.53)

Berman (1981) recognizes that policy effectiveness relies on the complex interactions among legislators, regulators and judicial proceedings. For school districts, Berman details how districts may have the willingness to comply with a legislative policy such as the Right-To-Know Law but might not have the capacity to comply. Berman also states that policy implementation should involve a fluid process and not just be an act of following the 'letter of the law.' Finally, districts should be treated differently under policy based on their capacity to comply not in an uniform manner. In other words, implementation should be differentiated.

Similar, to Berman, Montjoy & O'Toole (1979) also analyze how an organization's capacity can affect its ability to comply with the intent of a policy. Specifically they detail four models of policy implementation - one of which is a

common lament of school districts - how organizations are required to enact specific mandates with no new resources provided (Type D). With the lack of resources, it becomes "necessary to pressure the agency into absorbing the costs (of the mandate)" (p. 474). The other models include mandates that are vague and include financial considerations and other resources (Type A), mandates that are specific and include financial considerations and other resources (Type B), and finally mandates that are vague with no new resources provided (Type C). This model will also be applied to the implementation of the Right-To-Know Law for public school districts for the purposes of this study.

## Chapter Three

### **Methodology**

#### **Descriptive Research Design**

This study used a descriptive research design. Bickman and Rog (2009) state the goal of a descriptive design is to “provide a ‘picture’ of a phenomenon as it naturally occurs...summarizing the relationship between two or more variables” (p. 15). This study used multiple variables in order to describe the implementation of the Right-To-Know Law by Pennsylvania school districts. Specifically, a mixed method triangulation design with a convergence model was implemented (Creswell, Plano Clark, et al., 2003) consisting of a survey of Open Records Officers, an audit of website compliance, and an analysis of appeals to the Office of Open Records. Both a quantitative and qualitative study were run concurrently. The purpose of this method is “to obtain different but complimentary data on the same topic” (Morse, 1991, p.122). The quantitative and qualitative data was analyzed separately on the implementation of the Right-To-Know Law by school districts. The data was then converged by comparing and contrasting results during the interpretation. The rationale for using this approach is to validate, confirm or corroborate quantitative results with qualitative findings (Creswell & Plano Clark, 2007; Greene, Caracelli & Graham, 1989; Combs & Onwuegbuzie, 2010).

#### **Population and Sample**

There are 500 public school districts in Pennsylvania. The districts were ranked in order and numbered based on their 2012 student enrollment (Pennsylvania Department of Education, 2012). Using a random number generator, one hundred districts were chosen by a stratified random sample. The districts were separated into three categories based on

their 2012 student enrollment: large school districts consist of 5000 students or more, medium school districts have enrollment between 2000 and 5000 students, and small school district have less than 2000 students. For the purposes of this study, the stratified sample consists of 14 large school districts; 39 medium school districts; and 47 small school districts. Because the researcher is currently a superintendent in Beaver County Pennsylvania, the 14 school districts in Beaver County were not included in this study as the Open Records Officers (ORO) were more likely to be familiar with the researcher which may have biased their responses.

### **Protection of Human Subjects**

All results and data pertaining to this study were kept confidential in accordance with all federal, state, and local laws and regulations, as well as stipulations made by the investigator in conjunction with the study's approval by the Youngstown State University's Institutional Review Board for human subjects' research. Survey responses provided were logged and assigned a unique code, and had any district or individually-identifiable references redacted to ensure confidentiality. In no event will any publication or presentation resulting from this study identify any individual or school district by name or demographic characteristics that would result in being identifiable.

### **Pilot Study**

A survey was created by the researcher that gauged the perceptions and experiences of the Open Records Officer in Pennsylvania school districts as they apply the Right-To-Know Law. Even though much of the survey was based on the mandates of the Right-To-Know Law, which should be familiar to an Open Records Officer, the survey instrument was piloted to validate the effectiveness of the instrument, as well as

study the value of the questions as they relate to the primary research questions (Converse & Presser, 1986). The pilot group consisted of seven Open Records Officers who represent school districts in Beaver County Pennsylvania. This pilot group was chosen because they were excluded from the primary study as they are more likely to have familiarity with the researcher. The pilot group responses were used to correct any flaws in the survey's electronic format and design as well as the clarity of the questions, which included moving the open ended questions towards the end of the survey and inserting the word *approximate* in questions that required numerical answers

### **Mixed Method Approach**

#### **Survey of Open Records Officers**

The Right-To-Know Law mandates that every public agency, including school districts, assign someone the responsibilities of being the agency's Open Records Officer (ORO). The Open Records Officer contact information, by law, is to be posted on the agency's website. Obtaining the Open Records Officer information from the 100 chosen districts' websites was part of a more extensive analysis which will be described later in this chapter. If the Open Records Officer information was not found on the website a phone call was made to the district to obtain the contact information. An attempt was made to secure the email addresses of all the Open Records Officer in order to email a survey to them. If an email address was unattainable then a survey was mailed to them with a self-addressed stamped envelope. The survey was emailed to the Open Records Officers on May 31, 2013 and was completed by June 18, 2013.

The Open Records Officer was asked to complete the survey online using the web based survey service, Survey Monkey. The recipients had 14 days to complete the survey.

A reminder was sent, via email, to those who had not returned the survey after seven days. Once completed, the surveys were automatically emailed to the researcher via the survey service. The Open Records Officers who completed the paper copy of the survey were asked to mail the survey back to the researcher in the envelope provided. Each survey was assigned a unique number, which was known to the researcher, specific to each Open Records Officer and school district.

The survey was divided into the following categories: the profile of the Open Records Officer, the disposition of the Right-To-Know Law records that have processed by the school districts since the enactment of the Right-To-Know Law, the perceptions of the Open Records Officer, the district's policies and procedures as it applies the Right-To-Know Law, and recommendations for improvement or enforcement of the Right-To-Know Law.

The survey consisted of 33 questions. A majority of the survey, 21 questions, used a quantitative research approach to gather information from the Open Records Officers in regards to their experiences with the Right-To-Know Law. The survey also included five open-ended questions which allowed the respondent to identify their primary job with the school district, give their personal thoughts of the Right-To-Know Law, identify the total number of requests received, rank which records have been the most requested, and identify which exemptions have been applied most frequently in their district. Seven questions asked about the experiences of the Open Records Officers as they have implemented the Right-To-Know Law. One question asked for the student enrollment range of the district.

A Likert scale was used to measure the quantitative portions of the survey. Many researchers have found that using between 5-7 categories on a Likert scale yields the most reliable and valid responses (McKelvie, 1978; Finn, 1972). However, Andrews (1984) found that a 5-point scale was no more reliable than a 4-point scale. In a 4-point scale there is no midpoint, or neutral category. Matell and Jacoby (1971) found that eliminating a mid-point did not affect the reliability of the survey. In a follow up study, Matell and Jacoby (1972) suggested eliminating the midpoint or increase the number of reporting categories to ensure that respondents give a definitive answer to a survey question. In this study, the respondents knew that the lead researcher is a central office administrator which may have impacted how the Open Records Officer responded to a question on the survey. Garland (1991) suggested that such a bias may be reduced by eliminating the midpoint. The survey instrument was content specific for this study (Matell & Jacoby, 1971) and therefore, the school districts' Open Records Officer should have been familiar with the mandates of the Right-To-Know Law and be able to give a precise opinion. This study used a 4-point Likert scale to survey the Open Records Officer of public school district. To gauge perceptions and experiences of the Open Records Officer, 14 questions used the following response categories: strongly disagree, disagree, agree, and strongly agree. Seven other questions on the survey measured suggested revisions or improvements to the Right-To-Know Law by the Open Records Officer. The response categories used for this section were: strongly oppose, oppose, favor, and strongly favor.



**Audit of Website Right-To-Know Law Compliance**

In order to obtain the name of the Open Records Officer of each of the randomly chosen school districts, the researcher accessed the districts' websites. The Right-To-Know Law mandates that public agencies, including school districts, post the Open Records Officer contact information on their websites, as previously mentioned. In addition, districts must post the record request form, school district open records policy, and contact information for Pennsylvania's Office of Open Records (Section 504). The 100 school districts were analyzed for the following:

1. The size of the district.
2. If open record/right to know information access is identified on the website.
3. The primary job of the Open Records Officer.
4. The contact method for the Open Records Officer – email or mail?
5. If the record request form is available on the website.
6. If the district open records policy is posted on the website.
7. If the Office of Open Records information is posted on the website.
8. If the right to know information is on the home page of the website. If not, how many steps (clicks) does it take to get to the open records information on the website?

This analysis details how compliant the school districts are with the mandates of the Right-To-Know Law, specifically with the posting requirements of the law.

**Analysis of Appeals to the Office of Open Records**

Pennsylvania's Office of Open Records maintains a database which details all of the final determinations that it has issued since the enactment of the amended Right-To-

Know Law on January 1, 2009. Final determinations are decisions issued by the Office of Open Records after hearing appeals of open record requests that have been denied by a public agency. The Office of Open Records final determinations are non-binding and may be appealed to the Pennsylvania judiciary system.

The final determination database was analyzed specifically addressing the 100 school districts that have been chosen for this study. The following was coded for the districts studied:

1. How many Office of Open Records final determinations have involved the studied school districts? How often is the school district the prevailing party?
2. What are the most frequent record request denials that are appealed to the Office of Open Records?
3. On what basis did the district deny the record request (Specific exemptions, timeline issues or other technicalities)?
4. After the final determination has been issued, what is the highest level of court that an appeal has reached?

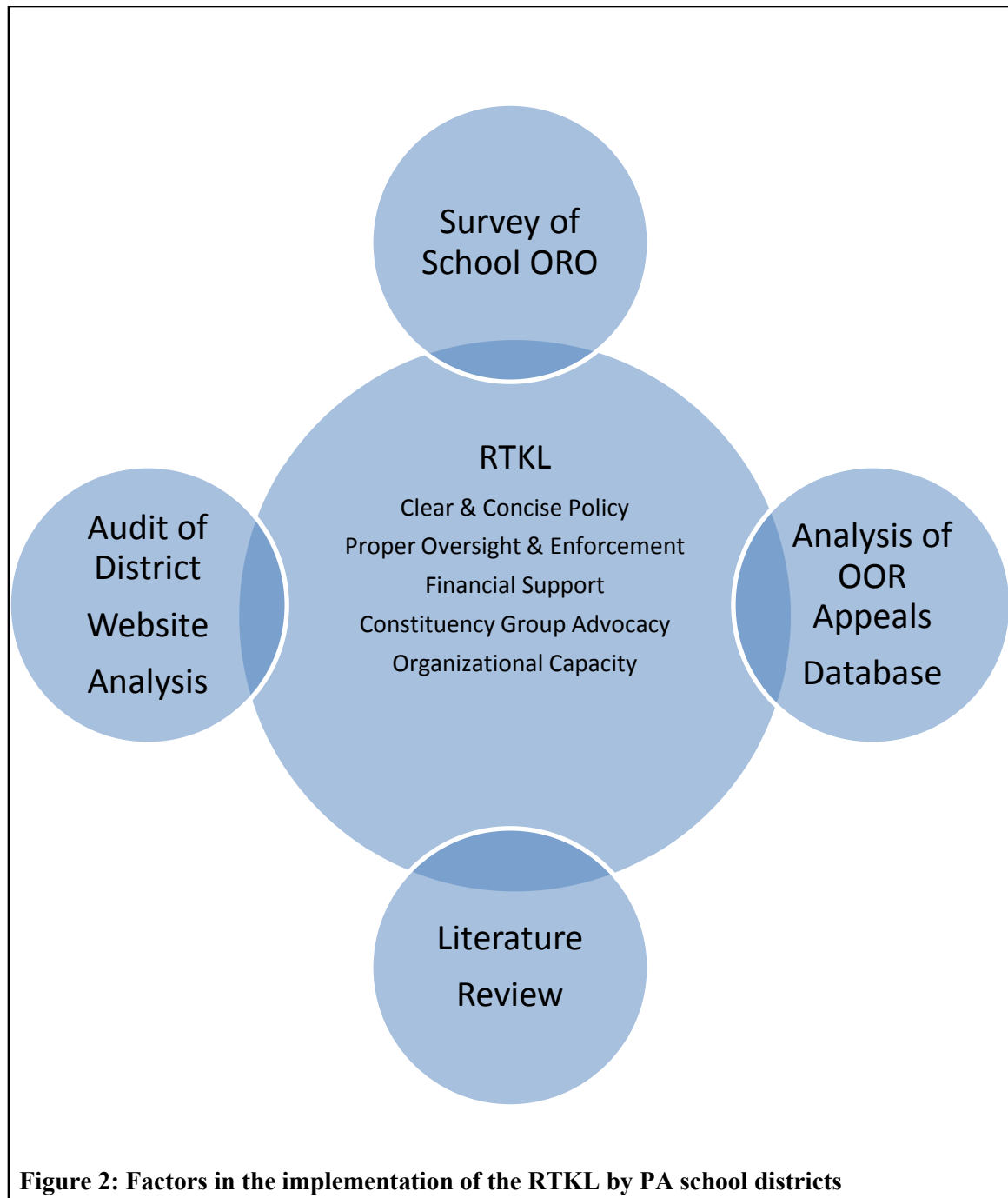
### **Data Analysis**

Combined with the literature review, which details how the Right-To-Know Law has been implemented since 2009, the survey of school districts' Open Records Officer, along with the audit of the websites of 100 school districts, and the analysis of the appeals to the Office of Open Records, this study describes the current environment of how the Right-To-Know Law is being applied at the state and local levels using the concepts of effective policy implementation (Sabatier and Mazmanian, 1980). Factors

that influence the implementation of the Right-To-Know Law by school districts included:

1. Is the Right-To-Know Law clear and concise in terms of policy?
2. Has there been proper oversight and enforcement of the Right-To-Know Law?
3. Has there been adequate financial support for the Right-To-Know Law?
4. Is there support for the Right-To-Know Law from constituency groups?
5. Do the local organizations have the capacity and the commitment to implement the Right-To-Know Law?

These factors were considered in proposing changes/revisions to the Right-To-Know Law as it applies to Pennsylvania school districts. The model for this study is illustrated in Figure 2.



### **Validity/Legitimation of the Study**

Teddlie and Tashakkori (2003) recognized that the concept of validity is generally associated with a quantitative study. They believed that for a mixed methods study researchers “should adopt a common nomenclature transcending the separate (qualitative)

and (quantitative) orientations when the described processes are highly similar and appropriate terminology exists” (p.12). Onwuegbuzie and Johnson (2006) conclude “that the use of the word *validity* in mixed research can be counterproductive” (p. 55). They suggest using the term *legitimation* and defined nine means of legitimation for assessing mixed research studies (p.57). This study was descriptive in design and many of the legitimation types may not apply specifically. However the legitimation types were used as a model in developing the following approaches for this study:

1. The research design matches the research questions.
2. The school districts chosen for this study were randomly chosen and stratified.
3. The survey instrument was used in a pilot study to determine the validity of the questions.
4. Multiple sources of data were used.
5. A limited time frame was studied - from when the Right-To-Know Law was enacted on January 1, 2009.
6. A research assistant was used to confirm the accuracy of the coding of data obtained from the school district websites and the Office of Open Records appeals database.

## Chapter Four

### **Data Collection and Analysis**

When Pennsylvania enacted a revised Right-To-Know Law in 2009, public agencies, including public school districts, were put on notice that the records maintained by such agencies would be presumed to be public records unless the agency could prove it fell within an exemption as expressly authorized by the Right-To-Know Law. This shift in policy has impacted all public agencies, not only in terms of transparency, but also on how financial and human resources are used to satisfy record requests. This study used a mixed method approach to understand how Pennsylvania's public schools are applying the Right-To-Know Law. One hundred randomly stratified school districts were chosen for this study. Each district was studied to a) determine if they abide by the posting mandates of the Right-To-Know Law, b) determine how often their decisions on record requests have been appealed to Pennsylvania's Office of Open Records (OOR), and c) gauge the perceptions and experiences of the Open Records Officers (ORO) who are responsible for the release of public records. Specifically, this study will analyze how school districts have applied the Right-To-Know Law since its enactment by answering the following research questions:

1. What is the profile of the Open Records Officers in Pennsylvania public school districts? (Survey, Analysis of District Websites)
2. How compliant are school districts with procedural and notification requirements found in the Right-To-Know Law? (Analysis of Websites)

3. What have been the experiences of the school district Open Records Officers in terms of the frequency, nature and disposition of record requests under Pennsylvania's Right-To-Know Law since 2009? (Survey, Analysis of Websites)
4. What are the perceptions of the Open Records Officers regarding the appropriate balance between transparency and organizational efficiency? (Survey)
5. What recommendations do Open Records Officers suggest to improve the implementation or the administration of the Right-To-Know Law? (Survey)

### **Survey of One Hundred Randomly Stratified School Districts**

#### **Pilot Survey**

A pilot survey was sent to the Open Records Officers of seven school districts that are located in the same county as the researcher in May, 2013. Survey questions were evaluated to determine how well respondents understood the questions and how they formulated their responses (Fowler, 1995, p.5). From the responses received and from solicited feedback through interviews with the Open Records Officer, the survey was modified. Three of the participants in the pilot survey were appointed Open Records Officer within the last two years; therefore there was some uncertainty on the record requests of the school districts that occurred before they were named the Open Records Officer. The word *approximate* was added to many of the questions that asked for the number of records that were requested, granted, denied or appealed since January 1, 2009. Also, many of the open ended questions, because they may have required research by the Open Records Officer or may have taken more time to answer, were moved to the end of the survey to allow for more responses before the survey may be abandoned. Galesic and Bosnjak (2009) found that an increase in experienced burden during the

questionnaire may negatively affect respondents' motivation to invest much effort in answering.

### **Survey Response Rate**

All 500 school districts were ranked from largest to smallest based on the Pennsylvania Department of Education 2012 student enrollment data. The 100 districts chosen to receive the survey were part of a randomly chosen stratified group. Each district was categorized as small (less than 2000 students), medium (2000 – 5000 students) or large (5000+ students). As a result of the stratification of the 100 districts, 14 large districts, 39 medium sized and 47 small sized districts were included in the sample.

Contact information for the Open Records Officer for each chosen district was obtained by district websites when available. Those districts that did not post the Open Records Officer information on their websites were contacted by phone by the researcher to obtain the Open Records Officer information. One school district did not have an Open Records Officer listed on its website and could not provide the information over the phone. Initially, electronic surveys were sent to 98 school districts via Survey Monkey. Two school districts had the surveys mailed to them, the one district that could not identify an Open Records Officer, and another that did not maintain a district website. Subsequently, four other districts had the surveys mailed to them when the electronic survey was rejected, either by network firewalls or by the Open Records Officer previously blocking surveys issued by Survey Monkey.

One week after the survey was distributed, it was sent out again to those Open Records Officers who did not respond to the original request. After one more week, an email was sent asking the non-responsive Open Records Officer to complete the survey.



Three weeks after the initial survey distribution, 38 responses were received – 36 electronically, and two by mail.

The response rates of the Open Records Officers were fairly representative of each stratified group. In the large classification, 4 out of 14 districts (28.6%) returned the survey, In the medium classification, 16 out 39 districts (41.0%) completed the survey, and 18 out of 47 (38.3%) of the small classification returned the survey.

Those Open Records Officers who responded to the survey gave current enrollment figures, which in two cases, resulted in movement that would have put their districts into the next category according to size. However, because the magnitude of the change in enrollment was negligible, the district remained in the category originally assigned by the state reported data.

### **Profile of Open Records Officers**

School districts do not employ full-time Open Records Officers. This section will detail the primary positions of each Open Records Officer in the 100 school districts. Also included, is a breakdown by position of each Open Records Officer who participated in the survey along with the number of years they have been in the role as Open Records Officer, the number of Right-To-Know Law trainings they have attended, and the time spent fulfilling their duties as the Open Records Officer in their district.

The analysis of the district websites, along with the phone calls to the districts that did not post contact information for the Open Records Officer, revealed the primary positions of the Open Records Officers in 99 school districts. One district (\*) did not list an Open Records Officer on its website and was unable to identify an Open Records

Officer when contacted by phone. Table 1 identifies the primary positions of the Open Records Officer.

**Table 1: Primary Positions of the OROs in School District by District Size**

| Position                 | Large | %     | Medium | %     | Small | %     | Total | %     |
|--------------------------|-------|-------|--------|-------|-------|-------|-------|-------|
| Superintendent           | 2     | 15.38 | 8      | 20.51 | 15    | 31.91 | 25    | 25.25 |
| Asst. Superintendent     | 2     | 15.38 | 3      | 7.69  | 2     | 4.26  | 7     | 7.07  |
| Business Manager         | 4     | 30.77 | 15     | 38.46 | 19    | 40.43 | 38    | 38.38 |
| Administrative Asst.     | 1     | 7.69  | 7      | 17.95 | 9     | 19.15 | 17    | 17.17 |
| Central Office Personnel | 4     | 30.77 | 6      | 15.38 | 2     | 4.26  | 12    | 12.12 |
| Total                    | 13*   |       | 39     |       | 47    |       | 99    |       |

In comparison, Table 2 identifies the primary positions of the 38 Open Records Officer who returned the survey.

**Table 2: Primary Positions of the OROs in School District by District Size**

| Position                 | Large | %      | Medium | %     | Small | %     | Total | %     |
|--------------------------|-------|--------|--------|-------|-------|-------|-------|-------|
| Superintendent           | 0     | 0.00   | 4      | 25.00 | 3     | 16.67 | 7     | 18.42 |
| Asst. Superintendent     | 0     | 0.00   | 0      | 0.00  | 2     | 11.11 | 2     | 5.26  |
| Business Manager         | 4     | 100.00 | 7      | 43.75 | 6     | 33.33 | 17    | 44.74 |
| Administrative Asst.     | 0     | 0.00   | 4      | 25.00 | 6     | 38.89 | 10    | 26.32 |
| Central Office Personnel | 0     | 0.00   | 1      | 6.25  | 1     | 5.56  | 2     | 5.26  |
| Total                    | 4     |        | 16     |       | 18    |       | 38    |       |

Business managers were most commonly designated as the Open Records Officer, accounting for 38.4% of the sample overall and a slightly higher proportion of Open Records Officers in small and medium districts, with 40.4% and 38.5% respectively. A similarly substantial proportion of the survey respondents, 17 of 38, or 44.7%, were business managers, with relatively proportionate representation among medium and small

districts in the overall sample and survey results. Business managers, however, were the sole group of respondents in the large group.

**Training of the Open Records Officer**

The Office of Open Records offers periodic training on the Right-To-Know Law for Open records officers. The trainings are not mandatory. Table 3 indicates the number of trainings attended by the Open Records Officer who responded to the survey.

**Table 3: Distribution of RTKL Trainings attended by ORO by Size of District**

| Trainings | Large  |       | Medium |       | Small  |       | Total  |       |
|-----------|--------|-------|--------|-------|--------|-------|--------|-------|
|           | Number | %     | Number | %     | Number | %     | Number | %     |
| 0         | 1      | 25.00 | 10     | 62.50 | 5      | 27.78 | 16     | 42.11 |
| 1         | 1      | 25.00 | 3      | 18.75 | 3      | 16.67 | 7      | 18.42 |
| 2         | 1      | 25.00 | 0      | 0.00  | 5      | 27.78 | 6      | 15.79 |
| 3 +       | 1      | 25.00 | 3      | 18.75 | 5      | 27.78 | 9      | 23.68 |

Table 4 highlights the number of trainings attended according to the primary position of the Open Records Officer.

**Table 4: Distribution of RTKL Trainings Attended by Primary Position**

| Primary Position                        | Trainings |   |   |     |
|---|-----------|---|---|-----|
|   | 0         | 1 | 2 | 3 + |
| Superintendent/<br>Asst. Superintendent | 6         | 2 | 0 | 1   |
| Business Manger                         | 7         | 3 | 4 | 3   |
| Admin. Asst.                            | 3         | 1 | 2 | 4   |
| Other                                   | 0         | 1 | 0 | 1   |
| Total                                   | 16        | 7 | 6 | 9   |

Like any new policy or piece of legislation, the Right-To-Know Law is constantly evolving as it has been implemented by all public agencies as well as being tested in the court system. The people in charge of applying the Right-To-Know Law in their district need to keep up to date as the law evolves. Occasional training on the Right-To-Know

Law would be the most efficient way to keep abreast of any developments in the Right-To-Know Law. However, the survey results do not reflect such an attitude. Over 42.1% of the survey respondents have had no training on the Right-To-Know Law since it has been enacted in 2009, and another 18.4% have had only one training. By far, the medium group has had the least amount of training, with the Open Records Officer reporting less than 20% having two or more trainings on the Right-To-Know Law as a group. Both the large and small groups had the number of trainings evenly distributed amongst all levels of training, but overall, only 23.6% report having 3 or more trainings on the Right-To-Know Law. By position, superintendents and assistant superintendents who are also designated as the Open Records Officer report having the least amount of training. Only one superintendent reported have participated in 3 or more trainings, while 88.9% have received minimal (0 or 1) training. Over half of the business managers have had minimal training while 40.0% of administrative assistants have had one training or less.

In many cases the primary position of the Open Records Officer did not see a significant increase in work load in dealing with Right-To-Know request. Table 5 indicates the amount of time spent on Right-To-Know Law issues by school district Open Records Officer as answered in the survey.

**Table 5: Time spent on RTKL issues by school district ORO**

| Answer Options | Response % | Response Count |
|----------------|------------|----------------|
| Less than 5%   | 86.8       | 33             |
| 6% to 10%      | 13.2       | 5              |
| 11% to 15%     | 0.0        | 0              |
| 16% to 20%     | 0.0        | 0              |
| 21% +          | 0.0        | 0              |

Of the 38 responding Open Records Officer, 33 or 86.8% reported spending less than 5% of their time performing the duties of the Open Records Officer, while 5 or 13.2% indicated it consumed 6% to 10% of their time. There was no discernible difference by district size in terms of amount of effort, although administrative assistants were more likely to report it as a more substantial duty, but even then only up to 10% of their efforts. See Appendix D.

### **Analysis of School District Websites**

#### **Compliance with Notification and Posting**

This section will analyze how compliant the 100 chosen school districts are in terms of compliance with the Right-To-Know Law. Also, each district will be assigned a grade that measures the ease of use of obtaining information from a website. A website that is compliant but is difficult to manipulate or use may be considered as useless as a website with no information at all.

Section 504 of the Right-To-Know Law requires public agencies, if a website is maintained, to post the following information:

1. Contact information of the Open Records Officer;
2. Contact information for the state Office of Open Records or other appeals officer;
3. A form which can be used to file a request;
4. Regulations, policies, and procedures of the agency (local school district) relating to the Right-To-Know Law.

All 100 randomly chosen school districts maintain websites (one district did not have a district website but one of its schools did maintain a website); therefore they are bound by the notification and posting requirements of the Right-To-Know Law. The

school district websites were evaluated for the compliance with the Right-To-Know Law as well as the ease of finding information for those members of the public interested in requesting a record. A grading scale was established with higher points being awarded to those categories that satisfy the Right-To-Know Law requirements. Lesser points were assigned to those categories that imply a less transparent process as implemented by a school district. For example, Section 703 of the Right-To-Know Law states that record requests may be submitted in person, by mail, by email or by facsimile. In this grading scale, a school district received one point if it provided the email address or fax number of the Open Records Officer on its website. A district that accepts electronic requests is allowing the process to be easier on the person requesting the record as it provides instant access to the Open Records Officer compared to sending a request via mail. Also, points were awarded for the ease of use of a districts' website. A district may satisfy the intent of the Right-To-Know Law by posting information somewhere on its website, but if it is not properly identified or easily accessible it may become a deterrent to the person trying to find the information. The grading scale used for the analysis of the websites is as follows:

**Required categories as dictated by the Right-To-Know Law**

- |  |          |
|--|----------|
| 1. Open Records information is identified on the district website.   | 2 Points |
| 2. The contact information for the Office of Open Records is listed. | 2 Points |
| 3. A request form for open records is available on the website.      | 2 Points |
| 4. The school district policy on open records is posted.             | 2 Points |

**Categories that measure the ease of use of the website for a records requester.**

- 1. Complete open records information is listed on the home page of the website. (If yes, skip to 4.)
    - Yes = 3 Points
    - No = 0 Points
  - 2. A tab exists on the home page that enables a user to find RTKL information. 1 Point
  - 3. Two or less mouse clicks are needed to find open records information. 1 Point
  - 4. An email address is provided for the Open Records Officer. 1 Point
- Total** 12 Points

Table 6 details the compliance of school district websites categorized by the size of the school.

**Table 6: Compliance Index of Applying the RTKL by School Districts by Size**

| District Size | Tot.       | Levels of Compliance (Points) |           |          |           |              |          |          |          |          |              |          |          |          |          |           |              |     |   |   |   |   |   |   |  |
|---------------|------------|-------------------------------|-----------|----------|-----------|--------------|----------|----------|----------|----------|--------------|----------|----------|----------|----------|-----------|--------------|-----|---|---|---|---|---|---|--|
|               |            | High                          |           |          |           | %            |          |          |          | Medium   |              |          |          | %        |          |           |              | Low |   |   |   | % |   |   |  |
|               |            | 12                            | 11        | 10       | 9         | 8            | 7        | 6        | 5        | 4        | 3            | 2        | 1        | 0        | 4        | 3         | 2            | 1   | 0 | 4 | 3 | 2 | 1 | 0 |  |
| Large         | 14         | 0                             | 5         | 2        | 3         | 71.42        | 0        | 0        | 2        | 0        | 4.29         | 0        | 0        | 0        | 0        | 2         | 14.29        |     |   |   |   |   |   |   |  |
| Medium        | 39         | 0                             | 15        | 4        | 3         | 56.41        | 1        | 3        | 2        | 3        | 23.08        | 1        | 0        | 0        | 0        | 7         | 20.51        |     |   |   |   |   |   |   |  |
| Small         | 47         | 0                             | 10        | 3        | 6         | 40.43        | 4        | 2        | 1        | 2        | 19.15        | 1        | 0        | 1        | 0        | 17        | 40.43        |     |   |   |   |   |   |   |  |
| <b>Total</b>  | <b>100</b> | <b>0</b>                      | <b>30</b> | <b>9</b> | <b>12</b> | <b>51.00</b> | <b>5</b> | <b>5</b> | <b>5</b> | <b>5</b> | <b>20.00</b> | <b>2</b> | <b>0</b> | <b>1</b> | <b>0</b> | <b>26</b> | <b>29.00</b> |     |   |   |   |   |   |   |  |

A member of the public wanting information on a school district would, more often than not, check the districts’ website. The homepage of the website is the first impression a visitor has of the district and it often is used as the guide to find out relevant information about the district. Out of the 100 school district websites analyzed, not one school had detailed open records information available on its homepage; therefore no school district received a perfect score according to this scale. Clearly, the smaller school districts are more non-compliant than the medium or large districts, but there are issues

across all districts. By earning a score of 9 or higher on the compliance index (Table 6), 51.0% of the 100 districts had a compliant website, as well as an easy to navigate website. 26.0% of the school districts had no open records information available on their websites, which is in defiance of the Right-To-Know Law. Six additional districts received points on this grading scale because their websites included some information on acquiring records, but the district did not provide contact information for the Open Records Officer. Only 56.0% of the school districts received a score of 8 out of 12 or higher, with over half of the smaller districts, 51.1% receiving a score of 7 or less. The complete point total for each district can be found in Appendix E.

### **Experiences of the Open Records Officer**

This section will look at the experiences of the Open Records Officer. 69.7% of the respondent's report that they have acted as the Open Records Officer in their district since the Right-To-Know Law was enacted. The number and types of records that are most commonly requested of the district will be detailed, as well as the records that are commonly not honored by districts due to exemptions or other issues. Also analyzed is the Office of Open Records database of final determinations which reveals what records are in dispute most often and what commonalities, if any, exist.

The Open Records Officer who responded to the survey were asked approximately how many records have been requested of their districts since the Right-To-Know Law was enacted in 2009. Table 7 reflects the approximate totals of records, categorized in groups of 20, requested by size of school district.



**Table 7: Frequency of Record Requests by District Size**

| Range of<br>Records<br>Requested | Large    |       | Medium   |       | Small  |       | Total |       |
|----------------------------------|----------|-------|----------|-------|--------|-------|-------|-------|
|                                  | No.      | %     | No.      | %     | No.    | %     | No.   | %     |
| 1-20                             | 0        | 0.00  | 5        | 31.25 | 8      | 61.54 | 13    | 40.63 |
| 21 - 40                          | 0        | 0.00  | 3        | 18.75 | 2      | 15.38 | 5     | 15.63 |
| 41- 60                           | 2        | 66.67 | 2        | 12.50 | 2      | 15.38 | 6     | 18.75 |
| 61 - 80                          | 0        | 0.00  | 2        | 12.50 | 0      | 0.00  | 2     | 6.25  |
| 81 - 100                         | 0        | 0.00  | 1        | 6.25  | 1      | 7.69  | 2     | 6.25  |
| 100 +                            | 1        | 33.33 | 3        | 18.75 | 0      | 0.00  | 4     | 12.50 |
| Range                            | 41 - 102 |       | 9 - 200* |       | 6 - 96 |       |       |       |
| Mean                             | 67.6     |       | 65.6     |       | 28.1   |       |       |       |

\* One district reported hundreds of requests. The number assigned was 200.

Large and medium districts had the most records requested over the last four years. While the range of requests for the two categories was between nine records and over 200 requested, the mean for both groups were very similar, 67.6% for the large group and 65.6% for the medium group. While the small group did have one district that approached 100 records requested, the mean number of requests was significantly smaller than the other two groups. The numbers of requests in the medium group were spread consistently through all ranges of requests while the small group skewed between 0 and 20 requests as being the most common. The large group had a low response rate on this part of the survey – one respondent.

Table 8 summarizes the types of records that are most commonly requested of school districts and which are detailed by the size of the district. The Open Records Officers were asked to identify the three most common record requests.

**Table 8: Frequency of Most Commonly Requested Records by District Size**

| Record Requested  | Large |       | Medium |       | Small |       | Total |       |
|---|-------|-------|--------|-------|-------|-------|-------|-------|
|   | No.   | %     | No.    | %     | No.   | %     | No.   | %     |
| Employee Contracts                                      | 2     | 33.33 | 12     | 35.29 | 9     | 21.95 | 23    | 28.40 |
| Personal Information (address, demographics, sick days) | 0     | 0.00  | 3      | 8.82  | 13    | 31.71 | 16    | 19.75 |
| Vendor Information                                      | 1     | 16.67 | 5      | 14.71 | 2     | 4.88  | 8     | 9.88  |
| Construction Information                                | 0     | 0.00  | 4      | 11.76 | 3     | 7.32  | 7     | 8.64  |
| Budget Information                                      | 1     | 16.67 | 3      | 8.82  | 7     | 17.07 | 11    | 13.58 |
| Tax Information   | 1     | 16.67 | 3      | 8.82  | 4     | 9.76  | 8     | 9.88  |
| Other   | 1     | 16.67 | 4      | 11.76 | 3     | 7.32  | 8     | 9.88  |

Overall, employee contracts were the most commonly requested record of school districts as 28.4% of all requests involved professional, support or administrative employment contracts. Similarly, employee information was the second most requested record. Personal information such as home addresses, phone numbers, email addresses, and evaluations comprised these requests. Third party information which related to construction costs such as bid documents or prevailing wage payroll, along with vendor contracts, particularly involving copy machines, combined for 18.5% of these requests. Financial information concerning budgets and taxes combined for 23.5% of the requests. Financial information of public agencies is already available in some format to the public, such as on the state-maintained website *PennWatch*, yet, under the Right-To-Know Law, these records can still be requested from the agencies. The survey group results were proportionately similar to the overall group, except for employee personal information being requested more frequently than employee contract information in the small group,

31.7% and 22.0%, respectively. The complete list of records requested is located in Appendix F.

As already noted in this study, in *PSEA v. Commonwealth of Pennsylvania* (2010), the Commonwealth Court decided that the home addresses of public school teachers are not covered under the Right-To-Know Law, and along with other personal information, are not to be considered public record. Despite this and similar court rulings, personal information of public employees continues to be a common records request. The Open Records Officers were asked to list the three most common records that are requested that have not been honored by their districts due to the exemptions of the Right-To-Know Law. The summary appears in Table 9.

**Table 9: Exemptions Cited Most Often in Not Honoring a Record Request by Size**

| Reason For Not Honoring Request             | Large |       | Medium |       | Small |       | Total |       |
|---|-------|-------|--------|-------|-------|-------|-------|-------|
|   | No.   | %     | No.    | %     | No.   | %     | No.   | %     |
| Personal Information (addresses)            | 2     | 33.33 | 4      | 36.36 | 7     | 38.89 | 13    | 37.14 |
| Record Does Not Exist                       | 1     | 16.67 | 2      | 18.18 | 7     | 38.89 | 10    | 28.57 |
| Improper Request (Issues with Request Form) | 1     | 16.67 | 4      | 36.36 | 3     | 16.67 | 8     | 22.86 |
| Pre-Decisional Information                  | 1     | 16.67 | 0      | 0.00  | 1     | 5.56  | 2     | 5.71  |
| Student Information (FERPA)                 | 1     | 16.67 | 1      | 9.09  | 0     | 0.00  | 2     | 5.71  |

Overall, personal information of employees is consistently cited by the Open Records Officer as the most common record request that is not honored in each survey group. The Right-To-Know Law (Section 705), states that a public agency does not have to create a record that does not exist. A non-existent record is the second most common reason to not fulfill a record request. Many requests get denied by school districts

because the proper request form was not used, the request asked a question, or was too vague. Requesters failing to follow proper procedures resulted in the third most common reason to deny a record overall, although in the medium group, procedural errors tied for the most common reason at 36.4%.

### **Analysis of Final Determinations Involving Chosen School Districts**

Section 1101 of the Right-To-Know Law addresses the appeals process that can be followed when a record request is denied by a public agency or school district. If denied, the record requester has 15 days after the notice of denial to file an appeal with the Office of Open Records (OOR). The appeals officer of the Office of Open Records then has 30 days to issue a final determination to both parties. The final determination is non-binding; therefore, either party has the right to file an appeal to a Commonwealth Court within 30 days.

In order to determine the nature of the appeals that are filed with the Office of Open Records, the final determination database of appeals was analyzed as it applies to the 100 randomly chosen school districts. One open record request can contain multiple requests; therefore record requests can be partially granted or denied by a school district. The same holds true for the Office of Open Records, an appeal may contain multiple denials and the Office of Open Records will issue final determinations that are partially granted or partially denied. Also, if proper protocol is not followed, as detailed in the Right-To-Know Law, an appeal is dismissed by the Office of Open Records, whether there is justification behind the appeal or not. Table 10 details the number of appeals that have been filed with the Office of Open Records that involved the 100 randomly chosen school districts from January 1, 2009, through March 31, 2013.

**Table 10: OORs Final Determinations by District Size**

| School District        | Appeals                  |              |                |           |           |              |                     |                     |                     |              |
|------------------------|--------------------------|--------------|----------------|-----------|-----------|--------------|---------------------|---------------------|---------------------|--------------|
|                        | District Appealed to OOR |              | Appeals to OOR | Requested | Granted   |              | Denied              |                     | Dismissed           |              |
|                        | No.                      | %            | No.            | No.       | No.       | %            | No.                 | %                   | No.                 | %            |
| Large (5000+)          | 9                        | 64.29        | 32             | 24        | 12        | 37.50        | 9                   | 28.13               | 14                  | 43.75        |
| Medium (2000-5000)     | 20                       | 51.28        | 52             | 45        | 17        | 32.69        | 23                  | 44.23               | 19                  | 36.54        |
| Small (Less than 2000) | 8                        | 17.02        | 28             | 11        | 9         | 32.14        | 10                  | 35.71               | 14                  | 50.00        |
| <b>Total</b>           | <b>37</b>                | <b>37.00</b> | <b>112</b>     | <b>80</b> | <b>38</b> | <b>33.93</b> | <b>42</b>           | <b>37.50</b>        | <b>47</b>           | <b>41.96</b> |
|                        |                          |              |                |           |           |              | 8 Partial Decisions | 8 Partial Decisions | 2 Partial Decisions |              |

Only 37 out of the 100 school districts have had appeals filed against them with the Office of Open Records. Those 37 school districts accounted for 112 appeals. The 112 appeals were filed by 80 people, highlighting how one person is able to make multiple open record requests and subsequently multiple appeals. One school district accounted for 10 appeals in which one person filed eight of the appeals. Thirty-eight of the 112 appeals, or 33.9%, were either granted partially or in full, while 89 appeals, or 79.5%, were denied (37.5%) or dismissed (42.0%) because of an issue with technical adequacy. The entire list of appeals can be found in Appendix G. District size did not make a difference as the number of appeals granted, denied or dismissed, due to technicality, were somewhat proportionate overall and across the survey groups. However, the small group had a substantially lower number of school districts, 17.0%, appealed to the Office of Open Records, compared to the large and medium groups, 64.3% and 51.3%, respectively.

**Exemptions Involving the Survey Group**

School districts are not required to honor every record request that is received. Many records are protected under exemptions (exceptions) that enable the district to deny a request. However, there are many exemptions, and justifications, of the Right-To-Know Law that can be interpreted in many different ways. In order to better understand how the Right-To-Know Law is being interpreted by the Office of Open Records, and subsequently the judicial system, the exemptions and justifications that are cited most often in the Office of Open Records final determination database were examined.

The Right-To-Know Law contains 30 exemptions (Section 708) that enable a school district the right to deny a record request. Table 11 documents the frequency of what exemptions were cited the most often in the Office of Open Records final determination database.

**Table 11: OORs Final Determinations - RTKL Exemptions**

| 708(b) - Exemption         | Granted | Denied | Total<br>Includes partial decisions |
|----------------------------|---------|--------|-------------------------------------|
| 6 – Personal Info          | 3, 3-P  | 2-P    | 8                                   |
| 10 – Pre decisional delib. | 2, 2-P  | 2      | 6                                   |
| 1(a) – Burden of proof     | 2, 3-P  |        | 5                                   |
| 7 – Employee evaluations   | 1       | 4      | 5                                   |
| 17 – Non-Criminal invest.  | 1       | 1      | 2                                   |
| 15 – Academic transcripts  |         | 2      | 2                                   |
| 8 – Labor negotiations     | 1-P     | 1-P    | 2                                   |
| 3 – Endangering safety     |         | 2      | 2                                   |
| 26 – Pre Bid information   |         | 1-P    | 1                                   |
| 30 – Addresses of Minors   |         | 1      | 1                                   |
| 27 – Communic. w/Ins. Co.  |         | 1      | 1                                   |

P = Partial Decision

The following is a description of each exemption that was cited in the Office of Open Records final determinations, including the number of times cited and the percent of the total number of appeals decided (112).

**708(a)1-(a)** – Burden of proof. The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence. Cited 5 times, involved in 4.5% of all appeals.

**708(b)3** – A record, the disclosure of which creates a reasonable likelihood of endangering the safety of others. Cited twice, involved in 1.8% of all appeals.

**708(b)6** – A record containing all or part of a person's social security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal email addresses; or employee number or other confidential personal identification number. Cited 8 times, involved in 7.1% of all appeals.

**708(b)7** – Records relating to an agency employee: A performance rating or review.

Cited 5 times, involved in 4.5% of all appeals.

**708(b)8** – A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. Cited twice, involved in 1.8% of all appeals.

**708(b)10** – The internal, pre-decisional deliberations of an agency, its members, employees or officials or pre-decisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including pre-decisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the pre-decisional deliberations. Cited 6 times, involved in 5.4% of all appeals.

**708(b)15** – Academic transcripts. This would also be protected under FERPA if it pertains to a student. Cited twice, involved in 1.8% of all appeals.

**708(b)17** – A record of an agency relating to a noncriminal investigation. Cited twice, involved in 1.8% of all appeals.

**708(b)26** – A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals). Cited once, involved in 0.9% of all appeals.



**708(b)27** – A record of information relating to communication between an agency and an insurance carrier. Cited once, involved in 0.9% of all appeals.

**708(b)30** – A record identifying the name, home address or date of birth of a child 17 years of age or younger. Cited once, involved in 0.9% of all appeals.

The most common exemption cited when an appeal is granted or denied is the exemption which involves the release of employee personal information according to the survey respondents. This finding coincides with the survey information provided by the Open Records Officers who responded that employee personal information was one of the most requested records in their districts. The Office of Open Records granted the appeal 75.0% of the time when making a final determination involving employee information. Similar requests that involve 708(b)7, the evaluation of district employees, clearly went in the favor of the school districts, with 80.0% of these appeals being denied. Other exemptions cited frequently by the Office of Open Records final determinations include records that involved pre-decisional documents (708(b)(10)), which the Office of Open Records found in favor of the requester almost half the time. Also, exemption 708(a)1(a), where the district did not adequately show that the requested record was not a public document, was also cited frequently by the Office of Open Records and, in every instance, granted the appeal.

#### **Other Justifications in the RTKL Cited by the OOR**

Other justifications are also used by the Office of Open Records in their final determinations to grant or deny an appeal. Table 12 highlights the number of appeals granted or denied by the Office of Open Records using the other justifications of the Right-To-Know Law.

**Table 12: OORs Final Determinations – RTKL Justifications**

| Section – Description                 | Granted | Denied  | Total<br>Includes partial decisions |
|---------------------------------------|---------|---------|-------------------------------------|
| 705 – Non-Creation of a record        | 4       | 15, 1-P | 20                                  |
| 701 – Records must be public/Ignore   | 8       | 0       | 8                                   |
| 703 – Record request must be specific | 4       | 2       | 6                                   |
| 1307 – Fee structure                  | 1, 1-P  | 2       | 4                                   |
| 708(a) – Burden of public record      | 2, 2-P  | 0       | 4                                   |
| 102 – RTKL definitions                | 1       | 2       | 3                                   |
| 902(b) – Procedural timelines         | 1       | 0       | 1                                   |
| 306 – Federal law supersedes RTKL     | 0       | 1       | 1                                   |
| 506 – Duplicate requests              | 1       | 0       | 1                                   |

P = Partial Decision

The following is a description of each justification that was cited in the Office of Open Records final determinations, including the number of times cited and the percent of the total number of appeals decided (112)

**102** – Definition section of the Right-To-Know Law. Cited 3 times, involved in 2.7% of all appeals.

**306** – Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree. Cited once, involved in 0.9% of all appeals.

**506** – An agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency. Cited once, involved in 0.9% of all appeals.

**701** – Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this act. A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public

records, legislative records, or financial records shall be available for access during the regular business hours of an agency. Cited 8 times, involved in 7.1% of all appeals.

**703** – A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by agency rules, any other electronic means. A written request must be addressed to the open-records officer designated pursuant to section 502. Employees of an agency shall be directed to forward requests for records to the open-records officer. A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the agency should address its response. A written request need not include any explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law. Cited 6 times, involved in 5.4% of all appeals.

**705** – When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record. Cited 20 times, involved in 17.9% of all appeals.

**708(a)** – The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency. Cited 4 times, involved in 3.6% of all appeals.

**902(b)** – (1) Upon a determination that one of the factors listed in subsection (a) applies, the open-records officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a). (2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the

reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice. Cited once, involved in 0.9% of all appeals.

**1307** – Fee structure - The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities. Cited 4 times, involved in 3.6% of all appeals.

School districts are not required to create a record that doesn't exist (Section 705). According to the final determinations of the Office of Open Records, 80.0% of the appeals that involve creation of a record have gone in favor of the school district. In every case involving Section 701 the school district ignored the original record request and the determination was ruled in favor of the requester. The burden of proving whether a record is public (708(a)) also went entirely in favor of the record requester in every appeal.

### **Appeals Dismissed Because of Technicalities**

Almost half of all appeals of the survey group, 41, 1% (Table 10), were dismissed by the Office of Open Records due to failure of the record requester to abide by procedures of the Right-To-Know Law. All but one of the dismissals involved Section 1101 which states:

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial,

legislative or other appeals officer designated under section 503(d) within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request. Cited 46 times in appeals that were dismissed.

If an appeal is not filed properly or timely to the Office of Open Records, the Office of Open Records has no choice but to dismiss the appeal. Of the 42.0% of the appeals that were dismissed by the Office of Open Records due to a technicality, all but one case involved Section 1101, which implies that those who are filing appeals may not be completely knowledgeable about the Right-To-Know Law. In more than one case a request for a record was ignored by a district but the requester failed to cite the correct Section of the Right-To-Know Law or failed to file the appeal within 15 days, and the appeal was dismissed.

### **Appeals to the Judiciary System**

If the Office of Open Records denies an appeal from a records requester through the final determination process, Section 1301 of the Right-To-Know Law allows for a further appeal to Pennsylvania's judiciary system, initially to the Court of Common Pleas. Of the 112 appeals that were ruled upon by the Office of Open Records until March 31, 2013, that involved the 100 districts chosen for this study, five were appealed to the Court of Common Pleas which represents 4.5% of the appeals determined by the Office of Open Records. In order to preserve the confidentiality of those districts chosen

for this study, the name of the record requester and of the school district has been assigned a code.

**Small District Case.** *Citizen v. District 122* – The Office of Open Records ruled that the school district acted properly when it denied access to the names and addresses of all parents in the district, among other requests. The citizen appealed to the Court of Common Pleas and was denied, upholding the Office of Open Records ruling and finding that the requested information fell within exemption 708(b)(30).

**Medium District Case.** *Citizen v. District 218* – The district did not respond to the original request seeking multiple records involving a parcel of property in the district. Because the district did not respond, the record request was deemed denied. The citizen appealed to the Office of Open Records and was granted access to all of the records. The district filed an appeal to the Court of Common Pleas claiming, among many things, that the defendant was driving up the legal fees of the district. The case was eventually settled without court action.

**Large District Cases.** *Citizen v. District 504* – The citizen requested pass/fail counts, among other academic items, of many different classes in the district. The district denied the request based on FERPA and student confidentiality. The citizen appealed to the Office of Open Records and was granted the appeal; the Office of Open Records reasoning that the district failed to meet its burden that the responsive record was exempt. The district appealed to the Court of Common Pleas and the decision by the Office of Open Records was reversed based on the court's interpretation that the district's original claim of applying exemption 708(b)(15)(ii) was correct.

*Citizen v. District 502* – The citizen requested the home addresses of the district’s employees, among other items. The district denied the request based on the Right-To-Know Law exemption stating that releasing the addresses would be jeopardizing the safety of its employees (RTKL, Section 708(b)(1)(ii)). The Office of Open Records granted the appeal by the citizen and ordered the district to release the records. The district appealed to the Court of Common Pleas. Before the case could be heard, Pennsylvania’s Commonwealth Court, in *PSEA, et al v. Pennsylvania Office of Open Records* (2010), prohibited the release of the home addresses of public school employees. Based on the Commonwealth Court ruling, this case was subsequently withdrawn.

*Citizen v. District 508* – The district ignored four separate requests asking for multiple records, mostly concerning a Charter school operating within the district. Even though it failed to respond, the district was permitted to respond to the request once an appeal was filed with the Office of Open Records. The district denied much of the request; The Office of Open Records partially granted, partially denied, and partially dismissed the appeal. The citizen claimed the district gave up all claims when they failed to respond to his original request. Court of Common Pleas upheld Office of Open Records. The citizen appealed to Pennsylvania’s Commonwealth Court, where it has yet to be heard in over two years since the original request for records.

### **Perceptions of the Open Records Officer: Survey Results**

This section will serve as a summary of the survey that was sent to the Open Records Officer 100 randomly chosen, stratified school districts. The survey was categorized into three sections; the perceptions of the Right-To-Know Law by the Open Records Officer regarding transparency and efficiency (Table 13); the perceptions of the

Right-To-Know Law by the Open Records Officer regarding district policies and practices (Table 14); and the Open Records Officer suggestions for improvement to the Right-To-Know Law, which will be detailed in the next section.



**Transparency and Efficiency****Table 13: OROs Perceptions of the RTKL Regarding Transparency and Efficiency**

|  | Strongly Disagree |       | Disagree |       | Agree |       | Strongly Agree |       |
|--|-------------------|-------|----------|-------|-------|-------|----------------|-------|
|  | No.               | %     | No.      | %     | No.   | %     | No.            | %     |
| I believe school district transparency is important.   | 0                 | 0.00  | 0        | 0.00  | 21    | 60.00 | 14             | 40.00 |
| I believe that a records request should be honored even if the district request form is not used properly.   | 4                 | 11.43 | 15       | 42.86 | 13    | 37.14 | 3              | 8.57  |
| The Right-To-Know law hinders the efficient operation of a school district.  | 0                 | 0.00  | 16       | 47.06 | 14    | 41.18 | 4              | 11.76 |
| The Right-To-Know Law provides clarity and certainty in terms of which records the public has a right to inspect.  | 7                 | 20.59 | 15       | 44.12 | 11    | 32.35 | 1              | 2.94  |
| A record request from a journalist is treated differently by the school district than a request from a citizen.  | 11                | 31.43 | 22       | 62.86 | 1     | 2.86  | 1              | 2.86  |
| Those who request records should be charged for the time/resources it takes to process the request.  | 0                 | 0.00  | 2        | 5.71  | 15    | 42.86 | 18             | 51.43 |
| If the district mistakenly denies a request from a private citizen, it is likely that the decision will be challenged and the district will ultimately have to comply. | 0                 | 0.00  | 9        | 25.71 | 24    | 68.57 | 2              | 5.71  |

All Open Records Officers who responded to the survey either agree or strongly agree that school district transparency is important. However, over half, 54.3%, feel that if a record request is not on a proper form then it shouldn't be honored. This feeling may be a result of the frustration that the Open Records Officer has in implementing the Right-To-Know Law. Almost half, 52.9%, feel that the Right-To-Know Law hinders efficient operation of the school district, and 64.7% feel that the Right-To-Know Law does not provide clarity and certainty in regards to what constitutes a public record. Despite the lack of presumed clarity of the law, a majority of the Open Records Officer, 74.3%, feel that if they make a mistake about releasing a record then their decision will ultimately be challenged and the district will ultimately have to comply. Section 703 does not require a record requester to indicate why the record is being requested. The reason for a request seemingly didn't matter to the Office of Open Records as over 94% felt that if a journalist requested a record, it would not be treated differently than from a citizen. One Open Records Officer, however, did summarize their districts relationship with the local newspaper:

Our local newspaper reporters are continually asking for information for their 'stories.' The information requested is usually NOT a public document, yet they expect the district to involve multiple administrators to create documents that they can use for their reports. To deny them causes poor public relations issues between the school and the public, and makes it appear that the district is withholding information from them.

Finally, and possibly another indication of frustration, 94.3% of the respondents felt that those who request records should be charged for the time and/or resources it

takes to process the request. With such a high percent in favor of charging a fee, it is obvious that this is the sentiment across all school districts. One Open Records Officer said, “I think if a request requires over a certain amount of time to complete, because some of them can be very time consuming, then there could be some kind of extra basic charge, especially since smaller school districts right-to-know officers are usually an employee who has many other duties.”

### **District Policy and Practices**

**Table 14: OROs Perceptions of the RTKL Regarding District Policies and Practices**

|   | Strongly Disagree |       | Disagree |       | Agree |       | Strongly Agree |       |
|---|-------------------|-------|----------|-------|-------|-------|----------------|-------|
|   | No.               | %     | No.      | %     | No.   | %     | No.            | %     |
| I have received all of the training necessary to adequately perform the responsibilities of being the Open Records Officer for my school district.                                    | 1                 | 2.86  | 8        | 22.86 | 22    | 62.86 | 4              | 11.43 |
| I am autonomous in determining how I will respond to a record request.  | 2                 | 5.71  | 20       | 57.14 | 13    | 37.14 | 0              | 0.00  |
| The top officials (School Board and administrative supervisors) in the school district where I work, stress the importance of district operations being transparent to the community. | 0                 | 0.00  | 1        | 2.86  | 25    | 71.43 | 9              | 25.71 |
| The district solicitor is consulted on almost every record that is requested.   | 4                 | 11.43 | 12       | 34.29 | 15    | 42.86 | 4              | 11.43 |
| The district struggles to implement the Right-To-Know Law due to limited capacity (funding, personnel, record management, etc.).  | 1                 | 2.86  | 21       | 60.00 | 10    | 28.57 | 3              | 8.57  |
| The district provides notifications and postings of key district information so they will be accessible which is consistent with provisions of the RTKL.                              | 0                 | 0.00  | 4        | 11.43 | 25    | 71.43 | 6              | 17.14 |
| The 30 day extension to respond to a request is invoked with almost every record request in the district.   | 5                 | 14.29 | 19       | 54.29 | 10    | 28.57 | 1              | 2.86  |

Over 74.3% of the Open Records Officers responded they have received all the training that is necessary to perform their duties as the Open Records Officer. Of the 23 Open Records Officers who reported participating in minimal training (0 or 1, Table 3), 56.5% felt that they have had enough training on the Right-To-Know Law.

Thirteen Open Record Officers, 37.1%, reported that their districts struggle with implementing the Right-To-Know Law due to limited staffs or limited capabilities. One Open Records Officer, with a district enrollment of approximately 1000 students, said processing record requests is “very time consuming, and for a small school district such as ours, this duty is added to someone who has many other duties. Also, (it is) expensive when we need to consult (with the) Solicitor.” Depending on the size of the request, bigger school districts also experienced a strain on staff time. One Open Records Officer, in a district with enrollment of 2800, commented that “some requests are very time consuming in nature.” Another ORO, in a district with 3900 said “smaller school districts right-to-know officers are usually an employee who has many other duties.”

Only 37.1% of the Open Records Officers stated that they are autonomous in determining how a response is made to a record request. In other words, over 62% of the districts involve multiple employees to handle open records requests. Often school district solicitors get involved with how to handle record requests. 54.3% of the Open Records Officers replied that the solicitor is involved with almost every request. With many solicitors making over \$100 per hour, and 25.0% (Table 7) of the reporting districts receiving over 60 requests the past four years, the cost of implementing the Right-To-Know Law has become a financial liability.

All but one respondent felt that transparency is valued by the top officials in their school districts, and all but four, 88.6%, feel that the district website provides key information which is consistent with the Right-To-Know Law, yet, despite the pledge to transparency, some actions may be contradictory. 31.4% of the Open Records Officers state that the 30 day extension to reply to a request is invoked almost every time there is a request. In some cases the extension is needed to gather information or to get a legal consultation. In other cases it may be used to delay or stall answering a request. Also, Table 6 highlights how 26 districts in this study did not mention Right-To-Know Law information on their websites with another 30 districts having minimal information concerning the law.

#### **Business Use of the Right-To-Know Law**

When the Right-To-Know Law was implemented in 2009 it was trumpeted as a way for the general public to ensure that the public agencies, paid for by public tax dollars, were transparent. Many of the requests that have been received by the Open Records Officers who have participated in this study have involved collective bargaining agreements, budget information, and real estate tax information – all of which seemingly satisfy the intent of the Right-To-Know Law. However, the Right-To-Know Law has had unintentional impacts on school districts. One Open Records Officer summed up their frustration with the Right-To-Know Law by saying that “businesses should not be allowed to use the Right-To-Know Law in order to develop informational databases for marketing and research purposes.” Another stated, “Private entities, such as contractors, should not be able to have unlimited access to records that could potentially be used for a profit motive.”

The Open Records Officers were asked to list the top three most common records that are requested from their districts since 2009. Employee contracts and budget information were the most common records requested. However, as detailed by the responses of the Open Records Officer, businesses routinely use the Right-To-Know Law to try to gain information on their competitors through the Right-To-Know process. One Open Records Officer said “we get more requests from companies trying to find out information so they can solicit business from our district.” Requests for vendor and construction contracts were mentioned by 14 Open Records Officers who responded to the survey as being some of the most common records requested. Specifically, requests for the leases or contracts of the district copier provider were mentioned more than any other type of vendor contract. As detailed in Table 8, the Open Records Officer reported over 18.5% of all record requests received involved construction or vendor contracts.

Requests involving charter schools were also mentioned by some of the Open Records Officers as a frustrating part of the Right-To-Know Law. One Open Records Officer said, “It was very frustrating to have a request for our entire written curriculum and student schedule to be utilized to create a curriculum and student schedule for a local charter school of similar size.” In the review of the Office of Open records database of final determinations for the 100 randomly chosen school districts for this study, not one school district stood out in terms of record disputes between the district and a charter school. However, the Office of Open records reports that school districts, which include charter schools, accounted for the most Right-To-Know appeals than any other public agency (OOR Annual Reports, 2009, 2010, 2011). In fact, Office of Open Records Executive Director Mutchler feels that charter schools repeatedly ignore the Right-To-

Know Law and call them “a cancer on the otherwise healthy right-to-know law” (Worden, 2013).

### **Suggested Improvements to the RTKL by the Open Records Officers**

Both the Better Government Association (BGA, 2002) and Stewart (2010) have offered suggestions on how to improve open records laws, not only in Pennsylvania, but across the country. This section will gauge the feelings of the Open Records Officer as they react to some of the recommendations in the survey. Table 15 summarizes the responses of the Open Records Officer.



**Table 15: Open Record Officers Recommendations for Improving the RTKL**

|  | Strongly Oppose |      | Oppose |       | Favor |       | Strongly Favor |       |
|--|-----------------|------|--------|-------|-------|-------|----------------|-------|
|  | No.             | %    | No.    | %     | No.   | %     | No.            | %     |
| The law should be made clearer by reducing the number of exemptions and/or defining them more specifically to lessen confusion about what records must be made available.  | 1               | 2.86 | 5      | 14.29 | 24    | 68.57 | 5              | 14.29 |
| Some aspects of the Right-To-Know Law should not apply or apply differently to school districts as contrasted to other public agencies that have one of their primary functions the maintenance of public records (e.g., the county title office). | 1               | 2.86 | 2      | 5.71  | 25    | 71.43 | 7              | 20.00 |
| The law should limit the number of requests any one person or entity can make annually to avoid undue burdens or abuses associated with the law.   | 0               | 0.00 | 3      | 8.82  | 17    | 50.00 | 14             | 41.18 |
| Those who request records should be charged for the time/resources it takes to process the request.  | 0               | 0.00 | 3      | 8.57  | 14    | 40.00 | 18             | 51.43 |
| The determinations of the Pennsylvania Office of Open Records regarding whether a record is one that should be made available under the RTKL should be binding on agencies unless overruled by a court.  | 1               | 3.03 | 6      | 18.18 | 22    | 66.67 | 4              | 12.12 |
| Some sort of mediation should occur with all involved parties before a dispute over a record release goes to Court.  | 0               | 0.00 | 2      | 5.71  | 25    | 71.43 | 8              | 22.86 |

The Right-To-Know Law has 30 exemptions. Twenty-nine respondents felt that the number of exemptions should be decreased. One Open Records Officer “would strongly suggest clarifying the exemptions so that they are easier to understand. I find that to be the most difficult part of the job.” In addition, 32, or 91.4% of the respondents stated that some aspects of the Right-To-Know Law should not apply to school districts. The Right-To-Know Law does not limit how many requests can be made by one individual. For example, one school district in this study had ten appeals filed against it with the Office of Open Records. Eight of the appeals were filed by one individual (Appendix G), with six being dismissed because of technicalities. According to 91.2% of the respondents, individuals should be limited on how many records they can request. Currently, the Office of Open Records issues a final determination on appeals that are filed. However, school districts do not have to abide by the ruling of the Office of Open Records as its determinations are not binding. Twenty-four respondents felt that the Office of Open Records should have some sort of binding power. The only option for a person who has an appeal denied by the Office of Open Records is to take the case to the Court of Common Pleas. This places a financial burden on the record requester as well as the school district. Mediation is currently available under the Right-To-Know Law, but it is not appreciably utilized. Only seven mediations were heard by the Office of Open Records in 2011, with two cases having a successful outcome (OOR, 2011 Annual Report). A majority of the Open Records Officers, 33, 94.3%, felt that requiring mediation before an appeal would proceed to court would be an improvement to the Right-To-Know Law. Both the BGA (2002) and Stewart (2010) suggest that school districts would be more responsive to open record requests if there were severe financial

penalties for not complying with the Right-To-Know Law. The respondents were split in half when asked if they favor financial penalties being imposed on districts that willfully fail to comply with the law.

### **Summary**

In this study, all designated Open Records Officers were central office employees, many of who have had minimal or no training on the implementation of the Right-To-Know Law. Every respondent to the survey felt that transparency was important and believed that the leadership in their school districts shared the same values. Many school districts struggle with different aspects of the Right-To-Know Law, especially with posting and notification requirements of the law. In many cases, other employees, including the district solicitor, get involved in record requests which increases the financial cost to process the request. The public may also have trouble understanding the law, as almost half of the appeals filed with the Office of Open Records are dismissed due to technical errors made by the record requester. A majority of the requests reported by school districts are either not permitted by the Right-To-Know Law (personal information of employees), or are already available in some form on the internet (budget or tax information). The Right-To-Know Law is also being used by private businesses to gain a competitive edge.

The Office of Open Records issues final determinations of appeals filed by record requesters, however, since the determinations are not binding; school districts are able to ignore the edicts. Financial penalties are in place for school districts that act in bad faith by refusing to release public records, yet not one Pennsylvania school district has been penalized for ignoring a record request to date.

The Open Records Officers offered suggestions on how the Right-To-Know Law could be revised in order for it to serve its original purpose as it applies to public school districts. These suggestions, combined with policy implementation models and prior research, will be the basis for recommendations in improving the Right-To-Know Law in Chapter 5.

## Chapter 5

### **Conclusions and Recommendations**

When Pennsylvania revised its Right-To-Know Law in 2008, it was heralded as an instrument for transparency. Records that were previously hidden would now be open for public inspection and scrutiny. Like many policies, the implementation of the law has had different outcomes than those that were intended. The Right-To-Know Law has had some effect in opening records to the public and the burden has been shifted to the public agencies as to why a record shouldn't be released, but the law has also had an unintended impact. This study examined how 100 Pennsylvania public school districts have implemented the law and suggest, based on their experience, how the law could be improved in order to realize its intended purpose.

### **Findings and Conclusions**

#### **Profile of School District Open Records Officers**

The role of the Open Records Officers is filled by central office personnel in virtually all 100 school districts studied, either by the administration or administrative assistants, and represents an additional duty assignment for these individuals. According to the survey of the Open Records Officers, this duty accounts for a small fraction of their effort and one for which a substantial majority have had limited training or preparation. District size appears to have little significance in terms of the proportion of an individual's time devoted to the role of Open Records Officer or their amount of training. However, superintendents who are also their districts Open Records Officers, report that they have had substantially less training than those who work in other positions. Finally, 74.3% of the Open Records Officers report that they have had adequate training on the

Right-To-Know Law, yet 54.3% state that they consult with the district solicitor on almost every record request.

### **Right-To-Know Law Notification and Posting Compliance**

A substantial minority of the 100 districts sampled, 1 in 4 districts, failed to satisfy even a minimal level of compliance with the website notification and posting requirements found in the Right-To-Know Law. An additional 23% scored only a moderate level of compliance with the web requirements. Large districts were somewhat more likely to demonstrate higher levels of compliance than their smaller district counterparts.

Of the 31 school districts that did not post Open Records Officer contact information on their websites, eight completed a survey for this study. Six of them report that their districts are adequately posting Right-To-Know Law information. There are no provisions in the Right-To-Know Law that penalize an agency if the agency does not comply with the posting and notification requirements, therefore, no school district has been penalized financially or otherwise for not posting information concerning the Right-To-Know Law. Like many mandates, if there is little or no enforcement the potential exists for sporadic compliance.

### **Frequency and Disposition of Records Requests and Appeals**

The number and disposition of record requests and appeals can help explain the level of transparency and the extent of conflict between school districts and those who request records. While the number of requests for records from the 38 surveyed school districts is substantial in the aggregate (1400), a majority of the districts had relatively few records requested – an average of 10 or fewer requests per year over the last four

years. A very small proportion of districts, particularly large and medium districts, however, receive what might be considered numerous requests, averaging up to 50 requests per year.

The number of requests denied that results in appeals to the state Office of Open Records is an indicator of school district responsiveness to a citizen's right-to-know and of organizational transparency. Relying on this indicator, the 38 districts surveyed are demonstrating substantial transparency, as only 31 appeals have arisen in conjunction with the approximately 1400 records. This represents one appeal per every 45 record requests, or just 2.2% of the requests resulting in citizen challenges. Furthermore, of the 31 appeals, only 8, or 26%, were granted by the Office of Open Records. Thus, of the 1400 record requests, school districts arguably erroneously denied 8, or 0.7%, of the requests.

The disposition of appeals also reflects the citizens understanding of the provisions and procedures associated with the Right-To-Know Law. For this analysis the number and disposition of appeals involving all 100 of the school districts in the sample were tracked. Of the 100 school districts, only 37 had appeals filed against them, totaling 112 appeals to the state Office of Open Records. Of the 112 appeals filed, only 38 (34%) were granted fully or partially. Thus over 65% of the appeals filed with the Office of Open Records involving school districts were denied (38%) or dismissed due to an issue of technical adequacy (42%). Perhaps part of the reason for the small percentage of appeals granted is due to how the Right-To-Know Law has evolved, as judicial interpretations since the law's adoption in 2009 have often added complexity rather than clarity to the law. Executive Director Mutchler summarizes what was revealed in the

analysis of the Office of Open Record's database, "a citizen almost has to be a lawyer [now] to have a case reviewed by us. If they don't have the necessary requirements to get in the door, we can't take the case" (Heidenreich, 2011). In fact, three of the five Court of Common Pleas cases involving the school districts in this study were filed by attorneys.

Information about employees is the most requested records of the school districts. Employee contracts, which are considered public records under the Right-To-Know Law, consisted of 28.4% of all records requested of the responding districts. The second most records requested, at 19.8%, were records that involved personal information of employees, such as home addresses. Records with such personal information are not subject to release under the Right-To-Know Law, and confirmed by judicial rulings. Despite highly publicized court cases that have prevented the release of public school employee home addresses, citizens continue to request personal information of school district employees, indicating the public's misunderstanding of the law. The district is still required to respond in denying such record requests; in fact 37.1% of records denied by school districts involved personal information of employees. Regardless of the knowledge of the record requester, the district must commit personnel and financial resources to deny the request. The cost to the districts is compounded further if the citizen appeals the denial to the Office of Open Records.

Soon after the Right-To-Know Law was enacted, Mutchler declared that the law "is a seismic shift, and it has opened a lot of filing cabinets" (Silver, 2009). Those Open Records Officers surveyed for this study seemingly would agree that many file cabinets have been opened, as approximately 1400 records requests have been received. As the common requests for employee addresses suggests, some requesters are less interested in



monitoring school district business practices for corruption than for their own business advantage. One Open Records Officer, expressing their frustration over contractors and vendors using the law to find out information about their competitors said, “businesses should not be allowed to use the Right-To-Know Law in order to develop informational databases for marketing and research purposes,” while another stated that “we get more requests from companies trying to find out information so they can solicit business from our district.” By contrast, records related to bidding, construction or vending, which permit the monitoring of public business transactions, were the third most requested records at 18.5%, with copier-related contracts or leases one of the top three record requests in seven different districts.

### **Perceptions of the Open Records Officers**

Open Records Officers were surveyed on three aspects of the Right-To-Know Law: their personal perceptions of the law, their perceptions on their district’s implementation of the law, and their recommendations to improve the law.

### **Personal Perceptions of Transparency**

All of the Open Records Officers believe that school district transparency is important, with 100% agreeing or strongly agreeing with that statement, and 97.1% confirming that top district officials subscribe to that belief as well. Yet a substantial majority, 52, 9%, indicated that the law hindered organizational operations or efficiency. Factors that may help explain the frustration of Open Records Officers in this regard are suggested in responses to other survey questions. For instance, over half of the Open Records Officers believed that the Right-To-Know Law lacked clarity on what records can be requested by the public, as was summed up by this Open Records Officer:

The majority of requests have been painless. Some requests have obvious health or confidentiality issues and require input from our solicitor which in turn creates a financial burden for us. Also, some requests require time and effort on our business department that is already overworked and understaffed.

Even though all but three Open Records Officers reported that their duties as Open Records Officer take up less than 5% of their time, an overwhelming majority stated that record requesters should be charged a fee for the time/resources it takes to process a request, reinforcing the importance of organizational efficiency.

Almost half of the Open Records Officers believe that a request should not be honored unless a proper form is used to request a record. At first glance, this may conflict with the majority belief that school district transparency is important, however it may be more of an indication of the need for a protocol or order to ensure the request is complete and can be efficiently processed.

One Open Records Officer expressed their frustration stating “the biggest problem I have is that I will prepare the information that is requested and the requestor NEVER comes to pay for it and pick it up.” Along the same lines, all but two of the Open Records Officers state there should be limits on how many records one person or entity can request. There were no suggestions offered on what an appropriate limit would be.

### **The Conflict of Perceptions and District Practices**

All but one of the Open Records Officers believe that the leadership of their districts value transparency, yet 68.6% report almost always invoking a 30-day extension to respond to a request, something which is permitted by the Right-To-Know Law. This delay could be construed as delaying transparency, not endorsing it, or as a sign that

districts lack the capacity to respond more promptly due to staffing constraints or competing demands.

A strong majority, 88.6%, report that their district websites are compliant with postings and notifications as dictated by the Right-To-Know Law. This finding is in strong disagreement with the compliance index (Table 6) that revealed almost half of the districts studied had a moderate or low level of compliance with the website posting and notification requirement found in the Right-To-Know Law.

Another finding reveals conflict between the perception of the Open Records Officer and the actual practice of the district. Over 74.2% of the Open Records Officers state that they have received all of the training necessary to adequately perform their duties, yet only 37.1% say that they are autonomous in responding to requests, and 54.3% consult the district solicitor on almost every request. Involving other district personnel in responding to requests significantly increases the cost in time/money to the district and suggests that these Open Records Officers could benefit from additional training.

### **Recommendations for Improvement to the RTKL by the ORO**

A clear statement of the rights and responsibilities of various parties is important to the effective application of any law including the Right-To-Know Law. The 30 exemptions found in the Right-To-Know Law can be viewed as strength on the assumption that with so many exemptions the law is very clear and detailed on what a public record is and what it is not. However, as all aspects of this study have shown, the exemptions have helped create implementation problems with the Right-To-Know Law at all levels of government. Almost 83% of the Open Records Officers who took part in this study feel that reducing or defining the exemptions more specifically would actually

lessen the confusion that surrounds the Right-To-Know Law. The Open Records Officers also report that over 50% of the records that have been denied by their school districts have involved requests that may indicate that the requester does not understand the intricacies of the Right-To-Know Law. Specifically, asking for records that don't exist (28.57%) and submitting improper requests (22.9%) are common, including ones that are vague, duplicated, asks a question, or are submitted on improper forms. Almost 79% of the Open Records Officers state that the Office of Open Records should have enforcement power, making their final determinations binding unless overruled by a court. Similarly, 94.3% of the Open Records Officers believe that some sort of mediation should take place with the involved parties before a dispute goes to court. An effective mediation process would, in a majority of cases, decrease the financial liability for all involved parties.

### **Policy Implementation of the Right-To-Know Law**

Sabatier and Mazmanian (1980) identified multiple conditions that are necessary for effective policy implementation. This section will examine how the Right-To-Know Law has been applied since its implementation in 2009 and whether it can be considered an effective policy. The conditions analyzed will include adequate oversight with proper enforcement, clarity of the policy, sufficient financial resources, support of constituency groups and the capacity and commitment of the policy implementers.

#### **Adequate Oversight with Proper Enforcement**

Shortly after the Right-To-Know Law was signed into law, Harman (2008) predicted that the revised law's success would rest on the development of the Office of Open Records. He was correct to assume if the Office of Open Records did not get off to

a strong start, the implementation of the policy may be affected. The Office of Open Records, not through a lack of effort, has not been allowed to develop due to a myriad of issues with the Right-To-Know Law. While the creation of the Office of Open Records was heralded as the key piece of the law, the lack of enforcement power that the office holds renders it largely ineffective. Executive Director Mutchler wrote “if an agency denies records, and the Office of Open Records orders release, some agencies simply refuse to obey the Order...this issue must be resolved or the Right-To-Know process risks becoming a meaningless exercise” (OOR 2010 Annual Report, p.3). The Right-To-Know Law does allow for financial penalties to be imposed in a court proceeding if a public agency acts in bad faith and improperly denies a record. However, as of July 2012, Byerly and Schnee point out that there were no “unappealed judicial award of attorney fees or civil penalties based on the finding that either an agency acted in bad faith or based its reasons on an unreasonable interpretation of the law” (p.129). Despite Mutchler’s repeated pleas for the Office of Open Records to gain some sort of enforcement power, the Right-To-Know Law has remained unchanged. Sabatier and Mazmanian (1980) recognized that meaningful policy implementation revolves around effective and recognized leadership and means of enforcement by agencies sympathetic to the policy objectives. While there is no doubt the Office of Open Records is committed to the principles of the Right-To-Know Law, the lack of enforcement authority leaves the organization powerless. A majority, 78.8% of the Open Records Officers surveyed in this study stated the Office of Open Records’ decisions should be binding.

**Clear and Concise Right-To-Know Law**

Sabatier and Mazmanian (1980) advocate that an effective policy not only be clear in its objectives, it must be concise. The 1957 Right-To-Know Law was as concise as possible, measuring only 203 words in length, however, it lacked clarity. While the 2008 revision of the law attempted to add clarity by addressing many of the issues that had arisen by both legislative and judicial branches since 1957, it sacrificed succinctness and introduced added complexity. The broad interpretation of the current law's 30 exemptions, as well as other parts of the law, has led to confusion for public agencies as well as the citizens. Gustitus (2011) states that "Pennsylvanians may be scratching their heads and wondering why the Right-To-Know Law still exists when it seems that so little is still protected for the citizens' examination"(p.630). A strong majority, 82.9%, of the Open Records Officers stated that the number of exemptions needs to be clarified, reduced, or defined more specifically.

**Sufficient Financial Resources**

Montjoy and O'Toole (1979) detail multiple policy implementation models, one of which details how a policy can be identified as ineffective if it enacts specific mandates upon an organization without providing adequate resources. When the Right-To-Know Law was enacted, all Pennsylvania public agencies were directed to comply, but no additional financial resources were allocated to the local agencies. The legislature did allocate money to create and sustain the Office of Open Records, however the agency has seen an increased workload each year since the office was established with little increase in its operating budget. Executive Director Terry Mutchler, echoing the sentiment of many school districts by asking for adequate funding, testified in front of a

Pennsylvania House Appropriations Committee hearing and said, “I don’t want to say it’s not doable – because we’re doing it – but we are doing it with great strain.” At the same hearing, State House Representative Bill Adolph added “we have to amend this law to get back to its original purpose...its created a financial hardship for a lot of our little municipalities and school districts” (Shade, 2013). As an indicator of how sensitive the cost of implementing the Right-To-Know Law has become to the Open Records Officers, an overwhelming 94.3% stated that record requesters should pay for their requests.

### **Constituency / Vigilant Groups**

When signed into legislation in February, 2008, Pennsylvania’s Right-To-Know Law was heralded by Governor Ed Rendell as fundamentally changing a citizen’s access to government records. His successor, Governor Tom Corbett, stated in his inauguration address that “we must restore transparency” (Corbett website, 2010). Yet both Governors have had conflicts with the Office of Open Records. In fact, five years to the day that Rendell signed the Right-To-Know Law, Corbett’s attorneys were arguing in a Commonwealth Court that some of his emails and calendar entries were not made, as determined by the Office of Open Records (Dale, 2013). The Associated Press reporter, Mark Scoloro, who made the original request for the email and calendar entries, was personally sued by the governor.

The public challenges of the Right-To-Know Law at the highest levels of Pennsylvania government suggest that changing the culture of transparency in government is a difficult process. The challenges also highlight some of the fundamental flaws in the Right-To-Know Law policy. Drexler’s (1994) observation of the original

Right-To-Know Law, that it was used as a vehicle for reducing citizens' access to government documents, is applicable to the revised Right-To-Know Law of 2008 as well.

As evident by the 100% of the Open Records Officers replying that the transparency of their school district is important, it is unlikely that any member of a government body would ever publically admit that they are against a transparent, open government. After all, their organizations and their salaries are funded by public money. However, as Governors Rendell and Corbett exhibited, much of the talk about a truly open government seems to be rhetoric. As Lessig (2009) states "the transparency movement, especially in the world of politics, has become an unquestionable bipartisan value" (p.37).

Similar to politicians, the general public would value an open, transparent government. However, as seen by attendance at government meetings or voting turnout in elections, the public is generally apathetic towards government functions unless awakened by scandal. They also lack the resources to truly delve into government operations. The press, from William Randolph Hearst, through Kent Cooper, up to the bloggers of today, has always been the biggest champions of the freedom of information and the public's right to know.

Fueled by the internet and social media, many different watch dog groups have been created that demand government transparency. Also, partisan politics and a flailing economy have produced an atmosphere where public agencies that use tax money are under much more scrutiny. The Right-To-Know Law is heavily supported by these groups.



### **Organizational Capacity and Commitment**

As has been repeatedly detailed in this study, scandal often creates policy. Historically, when policy is reactively established, it often is done so without “paying attention to how local deliverers of social service could comply” (Berman, 1982, p. 53). The Right-To-Know Law is rooted in the first amendment, and, on the surface, is a policy that makes sense – public agencies should be transparent. However, the actual implementation of the Right-To-Know Law has been problematic for public agencies, and specifically public school districts in Pennsylvania. School districts seemingly want to comply with the Right-To-Know Law as evidenced by the 100% stated support for transparency and by the release of thousands of records versus the low ratio of appeals to the Office of Open Records. In this study, those Open Records Officers who responded to the survey repeatedly stated how time consuming and costly preparing record requests has become. Berman (1981) suggests that policies should be differentiated for different organizations based on available resources and the ability to comply. 91.4% of the Open Records Officers believe that school districts should be treated differently under the Right-To-Know Law than other public agencies.

This study has detailed numerous examples how the Office of Open Records is struggling to be an effective oversight agency for the Right-To-Know Law. For the fourth straight year, the Office of Open Records set a record with the number of appeals received, over 2100, in 2012 (OOR, 2012 Annual Report). It is obvious that confusion exists around the law as evidenced by the number of appeals reaching the Office of Open Records, not just for school districts, but for all public agencies. Revisions to the law

have been introduced in the 2011, 2012, and 2013 legislative sessions, but in all instances the legislation never came up for a vote in the Pennsylvania legislature.

Since the Right-To-Know Law is relatively new, and similar to many legislative policies, it is still working its way through Pennsylvania's court system. Illustrating how bogged down the courts have gotten over the Right-To-Know Law, Governor Corbett's defense against releasing his emails and calendar entries to the Office of Open Records is to have the Commonwealth Court decide about each document in a separate hearing. This defense strategy led Commonwealth Court President Judge Dan Pellegrini to say, in challenging Corbett lawyer Jarad Wade Handelman, "I'm sure the Office of the Governor would fund the 6,000 hearings that would be required if we accept your position" (Dale, 2013).

### **Recommendations**

As Sabatier and Mazmanian (1980) stated, effective policies must have adequate oversight and financial support. Based on the results of the analyses of the school districts and Office of Open Records websites, the Open Records Officers survey, and the literature review, the Right-To-Know Law, in terms of public school districts, has neither the proper oversight nor the financial support in place. Due to reductions in the Pennsylvania budget, public agencies have been affected by a reduction in funding which in turn, in many cases, has reduced its workforce. Mandates such as the Right-To-Know Law serve a definite purpose. However, when the mandate is unfunded at the local and state levels, it increases the strain on an already taxed system which leads to policy failure. Thus, the Right-To-Know Law is less than effective in promoting its originally-

stated intent. This section will offer suggestion for improving the law based on the findings of this study.

The BGA's (2002) suggestion that open records laws will only be effective when there are substantial penalties in place may be unrealistic. In the existing climate of less funding, no local or state agencies, as well as very few citizens, have the resources to consistently engage in record request disputes through the current Right-To-Know Law process. Also, at least in Pennsylvania, there is a strong track record of no public agency being penalized for acting in bad faith when failing to release a record, which is perhaps a sign of its lack of clarity.

However, an adjustment to the Right-To-Know Law that would require very little additional funding, at least in its current state, would allow the Office of Open Records to issue binding decisions. The Office of Open Records is already issuing final determinations on appeals; if these determinations were binding the precedence would quickly clarify the law for all involved, unless over ruled by the courts. Reducing the uncertainty of the law, without having to wait for the courts to interpret the law, should make the law easier to apply and help reduce the cost and time associated with record disputes.

Stewart (2010) recognized, through a study of open records laws from around the country, that the enforcement mechanisms of open records laws are inconsistent and haphazard. He also detailed the weaknesses of incentive and disincentive programs in enforcing the laws. Based on the perceptions of the Open Records Officers in this study, the constant conflict between the Office of Open Records and other public agencies, and the narrowing of the Right-To-Know Law in the judicial system, Stewart's

recommendation that an alternative dispute resolution be a mechanism to handle open record disputes would be an improvement.

After the Office of Open Records issues a final determination, but before a dispute would reach the Court of Common Pleas, a formal mediation could take place to resolve disputes. Because of the generic record request form currently in place, there may be misunderstandings on the part of the requester and the district that could be resolved before it would reach court. While there would be an additional cost for all parties involved to be part of a formal mediation, the alternative of going through the court system would be a much more significant expense.

Kimball (2012), in a study of full time police agency Open Records Officers, found that training for the professionals and the public was a glaring need. In Pennsylvania, the standard open record request form assumes that the record requester understands the Right-To-Know Law. The record requester should attest that they have read a short tutorial on how to request a record. The tutorial could indicate where records already are accessible – like budget information, which records are commonly requested and where they may be available, what records are not public due to exemptions or judicial opinions, and a sample form so a requester could see how it should be filled out. Concurrently, school districts would be required to post financial records that are funded by public money. Employee contracts and budget and tax information were shown to have high requests rates in this study. If districts uniformly posted this information on their websites, and it was easily accessible, the number of record requests should drop dramatically. Districts would be required to attest to this posting yearly and any

subsequent audits by the Pennsylvania's Auditor General's office would include a website review.

Superintendents, who participated in this study, when acting as the Open Records Officer for their district, overwhelmingly had less training than any other district employee who handled record requests. In order to make the process more consistent and uniform, a suggestion would be to make the business manager the Open Records Officer in every school district where one is employed. Yearly trainings could then take place through the Pennsylvania Association of School Business Officials (PASBO). Consistent, ongoing training of the law would result in the law being applied more uniformly.

Other suggestions for improvement to the Right-To-Know Law, as suggested by the Open Records Officers who participated in this study, include limiting the number of requests that can be made by one individual. One citizen, allowed to request unlimited records, can create a substantial amount of work for a school district and subsequently the Office of Open Records. In this study, one school district had 10 record denials appealed to the Office of Open Records, 8 of them were appealed by the same person. Open Records Officers also stated that citizens should be charged a fee to process record requests. While public officials should assume that they are responsible for producing records that already exist, a suggestion would be to charge a fee for a large or excessive request. Also, allowing a district more time to process a request, especially a large request, would reduce the burden on the district.

While it may be difficult to prove that a record is being requested by a business and not a citizen, businesses should be charged a premium for collecting information for commercial purposes. This may be difficult to implement as the Right-To-Know Law is

very clear on protecting the requester from explaining if they belong to an organization and what they are going to do with the record, but such requests seem to be outside the central policy reasons for the Right-To-Know Law.

### **Future Research**

This study focused specifically on how school districts have applied Pennsylvania's Right-To-Know Law. This section will highlight possible future research topics that would expand or supplement this study.

This study could be replicated to include a sample of other types of public agencies to better understand the relationship these agencies have with record requesters. Such a study would give policy makers a complete picture of how the Right-To-Know Law is being applied across the state and across different public institutions. This might provide a basis for differentiating the Right-to-Know policy without sacrificing transparency as to certain types of public organizations.

Smaller school districts in this study had substantially fewer record requests. This raises the question of whether the cultural make-up, wealth, or educational attainment of the community may affect the types of records or number of records requested.

A study could be performed to determine the profile of the people who request records who are not affiliated with a business or organization. A survey of these requesters would determine their intent and their understanding of the Right-To-Know Law.

An analysis of all the costs involved with a Right-To-Know Law request could help assess the burden it imposes on public organizations and whether state resources should accompany the mandate. The cost of a request on time and resources at the local,

state level, and court proceedings could be analyzed on an individual case basis to understand the financial impact of the law.

An analysis of what exemptions of the Right-To-Know Law are heard most frequently in the judicial system could suggest how the law could be clarified or revised to eliminate vague provisions or reinforce the intent of the legislature.

## References

- Administrative Procedure Act, Pub L. 79-404 (1946).
- Alien and Sedition Act, 5 Sess. 2, Ch. 74, 1 Stat. 596 (1798).
- Andrews, F. (1984). Construct validity and error components of survey measures: A structural modeling approach. *Public Opinion Quarterly*, 48, 409-442.
- Baird, B. (1977). The government in the sunshine act: An overview. *Duke Law Journal*, 1977(2), 565-592.
- Berman, P. (1981). *From compliance to learning: implementing legally-induced reform*. [Stanford, Calif.]: Institute for Research on Educational Finance and Governance, School of Education, Stanford University. 46-62.
- Berman, P. (1982). Learning to comply. *Peabody Journal of Education*, 60(1), 53-65.
- Berry, M. (2012, March 11). Pennsylvania's right to know law protects the crooks, not the people. *The Pittsburgh Post-Gazette*. Retrieved from <http://www.post-gazette.com/stories/opinion/perspectives/pennsylvanias-right-to-know-law-protects-the-crooks-not-the-people-221827/>
- Better Government Association (2013). Mission and organization. Retrieved from [http://www.bettergov.org/about\\_us/mission\\_organization.aspx](http://www.bettergov.org/about_us/mission_organization.aspx)
- Bickman, L. & Rog, D. (Eds.). (2009). *The SAGE handbook of applied social research methods (2<sup>nd</sup> ed)*. Thousand Oaks, CA: Sage.
- Blanchard, S. (2012, December 6). Mutchler on money, mandates and the future of Pa's open records office. *York Daily Record*. Retrieved from <http://www.yorkblog.com/record/2011/12/06/mutchler-on-money-mandates-and-the-future-of-pa-s-open-records-office/>



- Blanton, T. (2002). The world's right to know. *Foreign Policy*. 131, 50-58.
- Blanton, T. (2004, December 2). Freedom of information battle 30 years old. *Knight Ridder/Tribune*. Retrieved from [www.vindy.com](http://www.vindy.com)
- Blanton, T. (2006). Freedom of information at 40. *The National Security Archive*. Retrieved from: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB194/>
- Bollan, W. (1766). *The freedom of speech and writings upon public affairs, considered with a historical view*. London: S. Baker.
- Boyd, J. et al. (Eds). (1950). *The papers of Thomas Jefferson*. Princeton: Princeton University Press.
- Brandeis, L. (1913, December 20). What publicity can do. *Harper's Weekly*. 10-13. Retrieved from [http://c0403731.cdn.cloudfiles.rackspacecloud.com/collection/papers/1910/1913\\_12\\_20\\_What\\_Publicity\\_Ca.pdf](http://c0403731.cdn.cloudfiles.rackspacecloud.com/collection/papers/1910/1913_12_20_What_Publicity_Ca.pdf)
- Butcher v. Philadelphia Civil Service Commission, 61 A 2d 367. Pa Super. Ct. (1948).
- Byerly, N. & Schnee, J.C. (2012). What every lawyer needs to know about the right-to-know. *Pennsylvania Bar Association Quarterly*, 83,116-130.
- Campbell, W., Ed. (2012). Yellow journalism: Puncturing the myths, defining the legacies. Retrieved from <http://academic2.american.edu/~wjc/yellowjo/timeline.html>
- Carrow, M. (1948). *The background of administrative law*. Newark: Associated Lawyers Publishing Company.
- Combs, J. & Onwuegbuzie, A. (2010). Describing and illustrating data analysis in mixed method research. *International Journal of Education*, 2(2), 1-23.

Commonwealth ex rel Biddle v. Walton. 6 Pa D 287 (1897).

Converse, J. & Presser, S. (1986). *Survey questions: Handcrafting the standardized questionnaire*. Thousand Oaks, CA: Sage.

Cooper, K. (1956). *The right to know*. New York: Farrar, Straus and Cudahy.

Corbett, T. (2010). *Tom Corbett's plan to reform Harrisburg*. Retrieved from <http://www.tomcorbettforgovernor.com/issues/government-reform/>

Couloumbis, A. (2009, April 10). Pa's public-records czar faults Rendell on openness. *The Philadelphia Inquirer*. Retrieved from

<http://www.lexisnexis.com.proxy.ohiolink.edu:9099/hottopics/lnacademic/>

Creswell, J., Plano Clark, V., Gutmann, M. & Hanson, W. (2003). Advanced mixed methods research designs. In A. Tashakkori & C. Teddlie (Eds.), *Handbook of mixed methods in social and behavioral research*. Thousand Oaks, CA: Sage. 209-240.

Creswell, J. & Plano Clark, V. (2007). *Designing and conducting mixed methods research*. Thousand Oaks, CA: Sage.

Cross, H. (1953). *The people's right to know. Legal access to public records and proceedings*. New York: Columbia University Press.

Cuillier, D. (2010). Honey v. vinegar: testing compliance-gaining theories in the context of freedom of information laws. *Communication Law & Policy*, 15, 203-229.

Dale, M. (2013, February 13). Gov. Corbett fights open records office over access. *The Reporter*. Retrieved from

<http://www.thereporteronline.com/article/20130213/NEWS03/130219802/0/SEA/RCH/gov-corbett-fights-open-records-office-over-access>

Department of Corrections v. OOR, 18 A.3d 429, Pa. Commw. Ct. (2011).

Drexler, S. (1994). Pennsylvania's right to know act: How it is used to discourage, delay and deny access to public documents and why it needs to be changed. *Duquesne Law Review*, 33 Duq. L. Rev. 127.

Durantine, P. (2012, March 16). Pennsylvania has right-to-know law, but austerity hinders transparency. *Newsworks*. Retrieved from <http://www.newsworks.org/>

Easton Area School District v. Baxter, 35 A. 3d 1259 Pa. Commw. Ct. (2012).

Edinboro University of Pennsylvania v. Folletti (no. 1900 C.D. 2010, 2011 Pa. Commn. Ct.)

Editorial. Underfunding open records office will defeat purpose. [Editorial]. (2009, July 22). *Harrisburg Patriot-News*. Retrieved from [http://www.pennlive.com/editorials/index.ssf/2009/07/underfunding\\_open\\_records\\_offi.html](http://www.pennlive.com/editorials/index.ssf/2009/07/underfunding_open_records_offi.html)

Editorial. What's Corbett trying to hide? [Editorial]. (2012, December 10). *The Philadelphia Inquirer*. Retrieved from <http://www.philly.com/philly/opinion/182759001.html>

Emerson, T. (1976). Symposium: The first amendment and the right to know: Legal foundations of the right to know. *Washington University Law Quarterly*, 1976. Delivered on March 3, 1976. 1-24.

Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99 (1974).

Finn, H. (1972). Effects of some variations in rating scale characteristics on the means and reliabilities of ratings. *Educational and Psychological Measurement*, 32, 255-265.

Fowler, F. (1995). *Improving survey questions: Design and evaluation*. 38, Thousand Oaks, CA: Sage.

Freedom of Information Act, Pub L. 89-554, 80 Stat. 383 (1966).

Freeh, L. (2012, July 12). *Report of the special investigative counsel regarding the actions of the Pennsylvania State University related to the child sexual abuse committed by Gerald A. Sandusky*. Retrieved from [http://www.thefreehreportonpsu.com/REPORT\\_FINAL\\_071212.pdf](http://www.thefreehreportonpsu.com/REPORT_FINAL_071212.pdf)

Fung, A., Graham, M., & Weil, D. (2007). *Full disclosure: the perils and promise of transparency*. New York, New York: Cambridge University Press.

Galesic, M., & Bosnjak, M. (2009). Effects of questionnaire length on participation and indicators of response quality in a web survey. *Public Opinion Quarterly*, 73, 349-60.

Garland, R. (1991). The mid-point on a rating scale. Is it desirable? *Marketing Bulletin*, 2, 66-70.

Greene, J., Caracelli, V., & Graham, W. (1989). Toward a conceptual framework for mixed-method evaluation designs. *Educational Evaluation and Policy Analysis*, 11(3), 255-274.

Gustitus, A. (2011). Annual survey of Pennsylvania administrative law: right-to-know law: narrowing the field: how *Schenk v. Township of Center* and the amendments to Pennsylvania's right-to-know law have frustrated the citizen's access to public records. *Widener Law Journal*, 20, 629-646.

Hammit H. (2000). FOIA commentary, *Access Reports*. Retrieved from <http://www.accessreports.com/>

- Harman, J. (2008). Oversight of state open records laws – a study of Pennsylvania’s new right to know law and the office of open records. *Pennsylvania Bar Association Quarterly*, 79, 93-142.
- Harper, J. (1997, June 17). At 25, Watergate’s details have gotten hazy: Americans have grown used to scandal. *The Washington Times*. Retrieved from <http://www.lexisnexis.com.proxy.ohiolink.edu:9099/hottopics/lnacademic/>
- Hearings on H.R. 10315 and H.R. 9868, 94th Cong., 1st Sess. 82 (1975).
- Health Insurance Portability and Accountability Act, Pub. L. 104-191, 110 Stat. 1936 (1996).
- Heidenreich, S. (2011, August 8). Thanks to ruling, government records harder to get. *The Philadelphia Inquirer*. Retrieved from [http://articles.philly.com/2011-08-08/news/29864733\\_1\\_appeals-open-government-ruling](http://articles.philly.com/2011-08-08/news/29864733_1_appeals-open-government-ruling)
- Hood, C. (2011). From FOI world to wikiLeaks world: A new chapter in the transparency story? *Governance: An International Journal of Policy, Administration, and Institutions*. Article first published online September 20, 2011. DOI: 10.1111/j.1468-0491.2011.01546.x
- Hunt, G. Ed. (1900). *The writings of James Madison*. 9 vols. New York: G. P. Putnam's Sons.
- Individuals with Disabilities Education Act, Pub. L. No. 108-446, 118 Stat. 2647 (2004).
- Kennedy, G. (1996). How Americans got their right to know: Getting congress to guarantee access to federal information through FOIA 30 years ago was a press triumph. *American Society of Newspaper Editors*. Retrieved from [www.johnmossfoundation.org](http://www.johnmossfoundation.org)

Kimball, M. (2003). Law enforcement records custodians' decision-making behaviors in response to Florida's public records law. *Communication Law and Policy*, 8(3), 313-360.

Kimball, M. (2012). Shining the light from the inside: Access professionals' perceptions of government transparency. *Communication Law and Policy*, 17, 299-328.

Kirwan v. Diamondback, 352 Md. 74, 721 A.2d 196 (1998).

Kurland, P. & Lerner, R. (2000). *The founders' constitution. Volume 5, amendment I (speech and press), document 8*. Chicago: The University of Chicago Press.

Lessig, L. (2009, October 21). Against transparency. *New Republic*, 240(19), 37-44.

Matell, M. & Jacoby, J. (1971). Is there an optimal number of alternatives for Likert scale Items? Study I: reliability and validity. *Educational and Psychological Measurement*, 31(3), 657-674.

Matell, M. & Jacoby, J. (1972). Is there an optimal number of alternatives for Likert scale Items? Effects of testing time and scale properties. *Journal of Applied Psychology*, 56(6), 506-509.

Mauriello, T. (2007, June 4). PA still lagging on open records reform; Change is a priority for some lawmakers; Universities oppose it. *The Pittsburgh Post-Gazette*. Retrieved from <http://www.post-gazette.com/stories/local/uncategorized/pa-still-lagging-on-open-records-reform-487941/>

McGee-Tubb, M. (2012). Deciphering the supremacy of federal funding conditions: Why state open records laws must yield to FERPA. *Boston College Law Review*, 53(3), 1045-1088.

- McKelvie, S. (1978). Graphic rating scales: How many categories? *British Journal of Psychology*, 69, 185-202.
- Meiklejohn, A. (1948). *Free speech and its relation to self-government*. New York: Harper Brothers Publishers.
- Merrill, J. (1967). The press and people's right to know. *The Freeman: Foundation for Economic Education*, 17, 108-111.
- Meyerson, J. (1968). The private revolution of William Bolla. *The New England Quarterly*, 41(4), 536-550.
- Miller, J. (1951). *Crisis in freedom: The Alien and Sedition Acts*. New York: Little Brown & Co.
- Montjoy, R., & O'Toole, L. (1979). Toward a theory of policy implementation: An organizational perspective. *Public Administration Review*, 39(5), 465-476.
- Morse, J. (1991). Approaches to qualitative-quantitative methodological triangulation. *Nursing Research*, 40(1), 120-123.
- Munson, S., Avrahami, D., Consolvo, S., Fogarty, J., Friedman, B., Smith, A. (2012). Sunlight or sunburn: A survey of attitudes toward online availability of US public records. *Information Policy*, 17(2), 99-114.
- Nissenbaum, H. (2004). Privacy as contextual integrity. *Washington Law Review*, 79, 119-154.
- Nissenbaum, H. (2009). *Privacy in context: Technology, policy, and the integrity of social life*. Palo Alto CA: Stanford Law Books.
- No Child Left Behind Act, Pub L 107-110— Section 9528 (2002).
- O'Brien, D. (1979). *Privacy, law and public policy*. New York. Praeger Publishers.

O'Brien, D. (1981). *The public's right to know: The supreme court and the first amendment*. New York: Praeger Publishers.

Ohio Coalition for Open Government. (2004). *Open records report: special edition*.

Retrieved from <http://www.ohionews.org/pdf/ocogspring2004se.pdf>

Onwuegbuzie, A. & Johnson, R. (2006). The validity issue in mixed research. *Research in the Schools*, 13(1), 48-63.

Pennsylvania County Court Reports, (1899). Volume 22, Philadelphia, T. and J.W. Johnson & Co. 287-288.

Pennsylvania Department of Education. (2012). *Public school enrollment 2011 -2012*.

Retrieved from

[http://www.portal.state.pa.us/portal/server.pt/document/1264744/enrollment\\_public\\_school\\_2011-12\\_xlsx](http://www.portal.state.pa.us/portal/server.pt/document/1264744/enrollment_public_school_2011-12_xlsx)

Pennsylvania Office of the Governor, (2008, February 14). With signing of open records bill, PA Governor Rendell shines brightest light on state government operations, information [Press release]. Retrieved from

<http://www.reuters.com/article/2008/02/14/idUS257813+14-Feb-2008+PRN20080214>

Pennsylvania Office of Open Records. (2010). *2009 Annual Report*. Retrieved from [https://www.dced.state.pa.us/public/oor/Annual Report 2009 FINAL.pdf](https://www.dced.state.pa.us/public/oor/Annual%20Report%202009%20FINAL.pdf)

Pennsylvania Office of Open Records. (2011). *2010 Annual Report*. Retrieved from <https://www.dced.state.pa.us/public/oor/2010AnnualReport>

Pennsylvania Office of Open Records. (2012). *2011 Annual Report*. Retrieved from <https://www.dced.state.pa.us/public/oor/2011AnnualReport.pdf>



- Pennsylvania Office of Open Records. (2012). *Citizen's guide*. Retrieved from [http://openrecords.state.pa.us/portal/server.pt/community/open\\_records/4434/citizens%E2%80%99\\_guide/487947](http://openrecords.state.pa.us/portal/server.pt/community/open_records/4434/citizens%E2%80%99_guide/487947)
- Pennsylvania Office of Open Records. (2013). *2012 Annual Report*. Retrieved from <https://www.dced.state.pa.us/public/oor/2012AnnualReport.pdf>
- Pennsylvania State Education Association v. Commonwealth of Pa., No. 09-396 Pa. Commw. Ct., (2010).
- Prichard, O. (2005, May 22). Agencies block access to records, study finds; Pa. public officials routinely deny legitimate request in clear violation of the state's right-to-know law, it found. *The Philadelphia Inquirer*. Retrieved from [http://articles.philly.com/2005-05-22/news/25441365\\_1\\_agencies-requests-access](http://articles.philly.com/2005-05-22/news/25441365_1_agencies-requests-access)
- Rayner, B. (1834). *Life of Jefferson*. Lilly, Wait, Colman, & Holden. Boston.
- Riepenhoff, J. & Jones, T. (2010, December 17). Secrecy 101. *The Columbus Dispatch*. Retrieved from <http://www.dispatch.com/content/stories/local/2010/10/14/secrecy-redirect.html>
- Right to Know Act, 65 P.S. § 65.101 et seq., (2008).
- Roosevelt, T. (1906, April 14). The man with a muck-rake. (speech). Retrieved from [www.americanrhetoric.com](http://www.americanrhetoric.com)
- Sabatier, P. & Mazmanian, D. (1980). A framework for implementation analysis. *Implementation and Public Policy*, 11, 18-48.
- Salzwedel, M. & Ericson, J. (2003). Cleaning up Buckley: How the Family Educational Rights and Privacy Act shields academic corruption in college athletics. *Wisconsin Law Review*, 10, 53-113.

Schwartz, B. (1949). Administrative terminology and the Administrative Procedure Act.

*Michigan Law Review*, 48(1).57-78.

Shade, M. (2013, March 4). Inmates, disgruntled officials creating hardships at PA open

records office. *The Bucks County Courier Times*. Retrieved from

[http://m.phillyburbs.com/news/local/courier\\_times\\_news/inmates-disgruntled-officials-creating-hardships-at-pa-open-records-office/article\\_021e9bd1-a8a6-58d6-a65f-01ed7d44c6a6.html?mode=jqm](http://m.phillyburbs.com/news/local/courier_times_news/inmates-disgruntled-officials-creating-hardships-at-pa-open-records-office/article_021e9bd1-a8a6-58d6-a65f-01ed7d44c6a6.html?mode=jqm)

Silver, J. (2009, November 29). State's records law hailed as a step forward; but

commitment to openness not trouble-free. *The Pittsburgh Post-Gazette*. Retrieved

from <http://www.post-gazette.com/stories/local/state/states-records-law-hailed-as-step-forward-369096/>

Silverblatt, R. (2013). Hiding behind ivory towers: Penalizing schools that improperly

invoke student privacy to suppress open records requests. *Georgetown Law*

*Journal*, 101, 493-517.

Simon Election Case. 46, A 2d 243, 245. Pa, (1946).

Sims, CA (2003) Implications of rational inattention. *Journal of Monetary Economics*,

50, 665–690.

Smith, H. (1944). Administrative law: A threat to constitutional government? *Virginia*

*Law Review*, 31(1). 1-8.

Stewart, D. (2010). Let the sunshine in, or else: An examination of the “teeth” of state

and federal open meetings and open records laws. *Communication Law and*

*Policy*, 15, 265-310.

Stewart, J. (2002). 2002 *BGA integrity index*. Retrieved from <http://www.bettergov.org/>

Stewart, J. (2008). *2008 Alper-integrity index*. Retrieved from <http://www.bettergov.org/>

The Sunshine Review. (2013). *About the sunshine review*. Retrieved from

[http://sunshinereview.org/index.php/Sunshine\\_Review>About#ixzz2Mwj7q7fD](http://sunshinereview.org/index.php/Sunshine_Review>About#ixzz2Mwj7q7fD)

The Sunshine Review. (2013). *Evaluation of Pennsylvania school district websites*.

Retrieved from

[http://sunshinereview.org/index.php/Evaluation\\_of\\_Pennsylvania\\_school\\_district\\_websites](http://sunshinereview.org/index.php/Evaluation_of_Pennsylvania_school_district_websites)

Taishoff, S. (1941, May 19). NAB convention votes fight to the finish: Will ask congress to probe FCC and rules. *Broadcasting and Broadcast Advertising*, 20(19). 7.

Teddlie, C. & Tashakkori, A. (2003). Major issues and controversies in the use of mixed methods in the social and behavioral sciences. In A. Tashakkori & C. Teddlie (Eds.), *Handbook of mixed methods in social and behavioral research* (3-50). Thousand Oaks, CA: Sage.

Tsoukas, H. (1997). The tyranny of light: The temptations and the paradoxes of the information society. *Futures*. 29 (9). 827-843.

United States v. Associated Press, 52 F. Supp. 362 S.D.N.Y, aff'd 326 U.S. 1 (1943).

U.S. Census Bureau. (2010). *State population*. Retrieved from

<http://quickfacts.census.gov/qfd/>

US Declaration of Independence. (1776).

Wiggins, J. (1956). The role of the press in safeguarding the people's right to know government business. *Marquette Law Review*, 40, 74-82.

Wiley v. Woods, 393 Pa. 341 141 A.2d (1958).

Wilson, W. (1913). *The new freedom: A call for the emancipation of the generous energies of a people*. New York: New York and Garden City Doubleday, Page & Co.

Worden, A. (2013, May 15). Pa. official: Charter schools flout public-records law. *The Philadelphia Inquirer*. Retrieved from [http://articles.philly.com/2013-05-15/news/39258122\\_1\\_open-records-public-charter-schools-ken-kilpatrick](http://articles.philly.com/2013-05-15/news/39258122_1_open-records-public-charter-schools-ken-kilpatrick)

Young, J. (2007, December 16). Benefits of learning. *The Altoona Mirror*. Retrieved from <http://extras.altoonamirror.com/schools/>

## Appendix A

## IRB Approval

**Youngstown**  
STATE UNIVERSITY

One University Plaza, Youngstown, Ohio 44555

School of Graduate Studies and Research

330.941.3091

Fax 330.941.1580

graduateschool@ysu.edu

March 28, 2013

Dr. Charles Vergon, Principal Investigator  
Mr. David Anney, Co-investigator  
Department of Educational Foundations, Research, Technology & Leadership  
UNIVERSITY

RE: HSRC Protocol Number: 154-2013  
Title: The Effectiveness of Pennsylvania's Right to Know Law as Implemented by  
Public School Districts: A Mixed Model Analysis

Dear Dr. Vergon and Mr. Anney:

The Institutional Review Board has reviewed the abovementioned protocol and determined that it is exempt from full committee review based on a DHHS Category 3 exemption.

Any changes in your research activity should be promptly reported to the Institutional Review Board and may not be initiated without IRB approval except where necessary to eliminate hazard to human subjects. Any unanticipated problems involving risks to subjects should also be promptly reported to the IRB.

The IRB would like to extend its best wishes to you in the conduct of this study.

Sincerely,

Cathy Bieber Parrott  
Chair, YSU Institutional Review Board

CBP:cc

c: Dr Joseph Edwards, Acting Chair  
Department of Educational Foundations, Research, Technology & Leadership

www.ysu.edu 

## Appendix B

## Consent Letter and Survey

**Right to Know Law and the Responsibilities of the ORO**

May 31, 2013

Dear Open Records Officer,

As the superintendent of the Riverside School District in western Pennsylvania, I appreciate the challenges that the state Right to Know Law can impose on school district Open Records Officers. I am writing to request your cooperation in a study to help others understand the role and responsibilities of OROs such as yourself, your experiences in responding to RTKL requests, and suggestions you have for how the law might be revised to overcome some of the common criticism associated with it. Your experience and insights are critical for others to understand as policymakers seek to balance the right of the public to school district transparency with our school districts' interests in organizational productivity and efficiency. Please take the 5 to 8 minutes necessary to complete this survey, which is part of my doctoral dissertation research. I will provide you a summary of the study findings when it is completed.

All results and data pertaining to this study will be kept confidential in accordance with all federal, state, and local laws and regulations, as well as the stipulations I have made in conjunction with the study's approval by the Institutional Review Board for human subjects research at my university. Responses provided, once logged and assigned a unique code, will have any district or individually-identifiable references redacted to ensure confidentiality. In no event will any publication or presentation resulting from this study identify any individual or school district by name or demographic characteristics that would result in either being identifiable. Furthermore, as the primary investigator, I stipulate that no appeal or claim will be initiated for a district's failure to provide information as requested, as this research was undertaken for purely academic reasons.

Participation in this study is voluntary. You may decline to participate in the study by not continuing with the survey or by quitting the survey at any time. By responding to the survey you are giving your implied consent to participate in the study. Should you have any questions about the survey or your participation in it contact Professor Charles Vergon, the senior Youngstown State University faculty member supervising my dissertation research. He can be contacted at 330-941-1574. If you have questions about participating as a human subject in a research project, you may contact Dr. Edward Orona, Director of Grants and Sponsored Programs at Youngstown State University (330-941-2377).

Thank you in advance for your assistance,

David Anney

dganney@student.ysu.edu

**Right to Know Law and the Responsibilities of the ORO**

Survey of Pennsylvania School District Open Records Officers

This survey asks about your role and experiences as an Open Records Officer in Pennsylvania and your recommendations regarding how the state Right to Know Law might be improved.

**1. What is the student enrollment of your school district?****2. What is your primary job title with the school district?****3. How many years have you been the Open Records Officer in your district (Round to nearest year)?**

- 1
- 2
- 3
- 4

**4. How many RTKL trainings have you attended since you were appointed the Open Records Officer?**

- 0
- 1
- 2
- 3+

**5. Approximately what percentage of your work duties involve responding to record requests via the Right to Know Law?**

- Less than 5%
- 6% to 10%
- 11% to 15%
- 16% to 20%
- 21%+

**Right to Know Law and the Responsibilities of the ORO**

**6. Approximately how many requests for information via the Right to Know Law has your district received over the last four years, or since January 1, 2009, when the law was amended to require an Open Records Officer?**

**7. Since January 2009, what are the three most common records requested under the RTKL?**

1

2

3

Next we are interested in your perceptions about the RTKL and experience in implementing it.

**8. I believe school district transparency is important.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**9. I believe that a records request should be honored even if the district request form is not used properly.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**10. The Right To Know law hinders the efficient operation of a school district.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**11. The Right To Know Law provides clarity and certainty in terms of which records the public has a right to inspect .**

Strongly Disagree  Disagree  Agree  Strongly Agree

**12. A record request from a journalist is treated differently by the school district than a request from a citizen.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**13. Those who request records should be charged for the time/resources it takes to process the request.**

Strongly Disagree  Disagree  Agree  Strongly Agree



**Right to Know Law and the Responsibilities of the ORO**

**14. If the district mistakenly denies a request from a private citizen, it is likely that the decision will be challenged and the district will ultimately have to comply.**

Strongly Disagree

Disagree

Agree

Strongly Agree

**Right to Know Law and the Responsibilities of the ORO**

**15. I have received all of the training necessary to adequately perform the responsibilities of being the Open Records Officer for my school district.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**16. I am autonomous in determining how I will respond to a record request.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**17. The top officials (School Board and administrative supervisors) in the school district where I work, stress the importance of district operations being transparent to the community.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**18. The district solicitor is consulted on almost every record that is requested.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**19. The district struggles to implement the Right To Know Law due to limited capacity (funding, personnel, record management, etc.).**

Strongly Disagree  Disagree  Agree  Strongly Agree

**20. The district provides notifications and postings of key district information so they will be accessible which is consistent with provisions of the RTKL.**

Strongly Disagree  Disagree  Agree  Strongly Agree

**21. The 30 day extension to respond to a request is invoked with almost every record request in the district.**

Strongly Disagree  Disagree  Agree  Strongly Agree

### Right to Know Law and the Responsibilities of the ORO

A number of groups have made recommendations for how the Right to Know Law could be improved. Please indicate your opinion about each of the recommendations.

**22. The law should be made clearer by reducing the number of exemptions and/or defining them more specifically to lessen confusion about what records must be made available.**

Strongly Oppose                      Oppose                      Favor                      Strongly Favor

**23. Some aspects of the Right to Know Law should not apply or apply differently to school districts as contrasted to other public agencies that have one of their primary functions the maintenance of public records (e.g., the county title office).**

Strongly Oppose                      Oppose                      Favor                      Strongly Favor

**24. The law should limit the number of requests any one person or entity can make annually to avoid undue burdens or abuses associated with the law.**

Strongly Oppose                      Oppose                      Favor                      Strongly Favor

**25. Those who request records should be charged for the time/resources it takes to process the request.**

Strongly Oppose                      Oppose                      Favor                      Strongly Favor

**26. The determinations of the Pennsylvania Office of Open Records regarding whether a record is one that should be made available under the RTKL should be binding on agencies unless overruled by a court.**

Strongly Oppose                      Oppose                      Favor                      Strongly Favor

**27. Some sort of mediation should occur with all involved parties before a dispute over a record release goes to Court.**

Strongly Oppose                      Oppose                      Favor                      Strongly Favor

**28. State funding for a school district should be reduced if the district willfully disregards or ignores the mandates of the Right To Know Law.**

Strongly Oppose                      Oppose                      Favor                      Strongly Favor

**Right to Know Law and the Responsibilities of the ORO**

**29. What other recommendations would you make to improve the implementation of the Right To Know Law for school districts?**

### Right to Know Law and the Responsibilities of the ORO

The RTKL makes it clear that not all records are subject to public review. In the following four questions we are interested in the number and nature of requests that you have had to deal with that are outside the public's right to know, since they represent areas where the public may be misinformed about their rights or applicable procedures under the RTKL.

**30. Approximately how many requests for information have not been honored in total or in part since January 1, 2009?**

- Less than 5
- 6 to 10
- 11 to 15
- 16 to 20

If > 20 then total number is...

**31. Approximately how many requests for information were not honored because of applicable exemption(s) found in the RTKL since January 1, 2009?**

- Less than 5
- 6 to 10
- 11 to 15
- 16 to 20

If > 20 then total number is...

**32. Since January 1, 2009, which RTKL exemptions have been cited most frequently by your district when a record request has not been honored? Please list the top 3.**

|   |                      |
|---|----------------------|
| 1 | <input type="text"/> |
| 2 | <input type="text"/> |
| 3 | <input type="text"/> |

**Right to Know Law and the Responsibilities of the ORO**

**33. Approximately how many requests for information were inadequate because of procedural errors by the requestor (improper form, timeliness, etc.) since January 1, 2009?**

- Less than 5
- 6 to 10
- 11 to 15
- 16 to 20

If > 20 then total number is...

**34. Are there any other things you would like to share regarding your role or experience as Open Records Officer?**

Thank you for your cooperation in completing this survey.

A summary of the findings of the survey will be provided to those participating in the study.

## Appendix C

### An Overview of Filing a Right-To-Know Request in Pennsylvania

(Information via Pennsylvania's Office of Open Records (2013) website.)

A requester can file a Right-To-Know request in four ways. You can submit your request by:

1. Fax
2. Electronic mail
3. In person
4. U.S. Mail

When submitting a request to the Agency, *always* retain a copy for your file. A copy of this RTK request would be necessary if you should need to file an appeal to our office upon denial. If you do not have a copy of the actual request, your appeal will be dismissed as insufficient.

The first thing a requester should do to file a RTK request is check with the local or Commonwealth Agency to determine the Open Records Officer (each Agency must have one) and whether the Agency requires use of its own Right-to-Know request form. You can always use the Uniform Request Form available on our website to file a request. Address your request to the Open Records Officer. Some Agencies use the term "Right-to-Know Officer."

You should make sure that your request for records is specific and concise. Identify as specifically as you can the records you want, so that an Agency can quickly locate them and determine whether they are public record.

Please be advised that if you send an e-mail request or file a request in person it does not speed-up the time that an Agency has to respond to your request. An Agency has five business days to respond to a request, whether you place the request in person or by mail.

### **What to Expect from the Agency**

An Agency has *five business days* to respond in writing to: 1) grant the request, 2) deny the request (citing the legal basis for denial/partial denial) or 3) invoke a 30-day extension for certain reasons. The clock starts the day after the request is received during regular business hours.

Acceptable grounds for a 30-day extension includes: off-site location of records, staffing limitations, need for legal review or redaction, complex request, or requester did not pay applicable fees as required, or failed to follow Agency policy.

If an Agency does not respond to a request in the allotted time the request is deemed denied, and you have the right to file an appeal with the Office of Open Records.

### **How to File an Appeal**

If an Agency denies a record, or a portion of a record, the requester can file an appeal with the Office of Open Records.

The appeal must be submitted to the Office of Open Records within 15 business days of the mailing date of the Agency's response. Appeals should be sent to the Office of Open Records, Commonwealth Keystone Building, 400 North St., 4th Floor, Harrisburg, PA 17120-0225. They may also be submitted via facsimile to 717-425-5343 or via email to [openrecords@pa.gov](mailto:openrecords@pa.gov) as a Microsoft Word or PDF attachment.



All appeals must be in writing and shall include the following information that may be submitted using the Appeals Forms found on <http://openrecords.state.pa.us>:

- A copy of the Right-to-Know Request.
- A copy of the denial letter submitted by the Agency - If the agency does not respond in writing within five business days, the request is “deemed denied” (automatically denied) and can be appealed.
- State the grounds you believe the record is a public record – you must state why you believe the requested record is a public record – a general statement that the record is public under the Right-to-Know Law is insufficient.
- Address *all* grounds that the Agency raised in its denial – you must state why you believe each of the agency’s denial, arguments, and exemptions are incorrect – a general statement that the agency is incorrect is insufficient.

The Office of Open Records is required to dismiss any appeal that does not include this information.

When the Office of Open Records receives the appeal, it has 30 days from the date of receipt of the appeal to issue a Final Determination.

The Office of Open Records may conduct a hearing (which is a non-appealable decision) or an *in camera* review. It may decide the case on the basis of the information filed with the Office. It may seek additional information from the involved parties. In most cases, the Office of Open Records will issue a Final Determination based on information and evidence provided to our Office without conducting a hearing.

When the Office of Open Records issues a Final Determination it is binding on the Agency and requester. If the Agency or the requester wants to appeal the ruling of the

Office of Open Records, the appeal must be filed with the appropriate court within 30 calendar days of the mailing of the Final Determination by the Office.

If the parties appeal a Final Determination to Commonwealth Court or a Court of Common Pleas, the Right-to-Know Law requires that the Office of Open Records be served notice of the appeal.

### **Fees**

The fee for a standard 8 1/2 x 11 black and white document is up to 25 cents per page.

- Postage fees may not exceed the actual cost of mailing.
- If an Agency offers enhanced electronic access it can establish user fees that must be approved by the Office of Open Records.
- An Agency cannot charge for the time it takes to redact a document or the legal review needed to determine if a document is a public record.
- An Agency may require pre-payment if the fees are expected to exceed \$100.
- An Agency may withhold public records if you have not paid for previous requested records.

### **Penalties**

The law provides a civil penalty of up to \$1,500 if an Agency denies access to a public record in bad faith and up to \$500 per day when an Agency does not promptly comply with a court order to release records under the act.

### **Attorney Fees**

If a court holds that records were denied based on an unreasonable interpretation of law, or in bad faith, an Agency can be required to pay attorneys' fees. In addition, *if* your RTKL appeal is deemed frivolous by the court, the requester or agency can be required to pay attorneys' fees.

## Appendix D

## Profile of Open Records Officers by District Size

**Table A 1: Profile of ORO by District Size**

| District | Primary Position     | Enrollment | Years<br>as<br>ORO | Number of<br>RTKL trainings | Time spent as<br>ORO (%) |
|----------|----------------------|------------|--------------------|-----------------------------|--------------------------|
| 504      | Business Manager     | 12000      | 4                  | 2                           | Less than 5              |
| 503      | Business Manager     | 10700      | 2                  | 0                           | Less than 5              |
| 505      | Business Manager     | 5900       | 3                  | 1                           | Less than 5              |
| 516      | Business Manager     | 5300       | 3                  | 3                           | 6 to 10                  |
| 224      | Business Manager     | 4500       | 4                  | 1                           | less than 5              |
| 216      | Business Manager     | 4450       | 4                  | 0                           | Less than 5              |
| 206      | Business Manager     | 4200       | 4                  | 3                           | Less than 5              |
| 229      | Superintendent       | 4200       | 4                  | 0                           | Less than 5              |
| 235      | Administrative Asst. | 3900       | 4                  | 0                           | Less than 5              |
| 202      | Administrative Asst. | 3775       | 4                  | 3                           | Less than 5              |
| 218      | Business Manager     | 3450       | 3                  | 0                           | Less than 5              |
| 205      | Administrative Asst. | 3200       | 4                  | 3                           | 6 to 10                  |
| 219      | Business Manager     | 3000       | 4                  | 1                           | Less than 5              |
| 227      | Administrative Asst. | 2800       | 1                  | 0                           | Less than 5              |
| 203      | Superintendent       | 2800       | 4                  | 1                           | Less than 5              |
| 214      | Public Relations     | 2600       | 4                  | 1                           | Less than 5              |
| 144      | Business Manager     | 2100       | 4                  | 0                           | Less than 5              |
| 221      | Administrative Asst. | 2100       | 2                  | 0                           | 6 to 10                  |
| 237      | Superintendent       | 2100       | 3                  | 0                           | Less than 5              |
| 215      | Superintendent       | 2100       | 2                  | 0                           | Less than 5              |
| 128      | Public Relations     | 1995       | 1                  | 3                           | Less than 5              |
| 140      | Superintendent       | 1980       | 4                  | 0                           | Less than 5              |
| 143      | Business Manager     | 1900       | 4                  | 2                           | Less than 5              |
| 116      | Business Manager     | 1800       | 4                  | 0                           | 6 to 10                  |
| 108      | Business Manager     | 1780       | 4                  | 3                           | Less than 5              |
| 115      | Superintendent       | 1700       | 4                  | 1                           | Less than 5              |
| 124      | Asst. Superintendent | 1669       | 4                  | 3                           | Less than 5              |
| 118      | Administrative Asst. | 1565       | 1                  | 1                           | Less than 5              |
| 121      | Administrative Asst. | 1486       | 3                  | 2                           | Less than 5              |
| 145      | Asst. Superintendent | 1300       | 4                  | 1                           | Less than 5              |
| 105      | Business Manager     | 1275       | 4                  | 2                           | Less than 5              |
| 142      | Superintendent       | 1200       | 4                  | 0                           | Less than 5              |
| 102      | Administrative Asst. | 1200       | 4                  | 2                           | 6 to 10                  |
| 101      | School Board Sect.   | 1160       | 4                  | 3                           | Less than 5              |
| 230      | Administrative Asst. | 1100       | 4                  | 3                           | Less than 5              |
| 127      | Business Manager     | 950        | 4                  | 2                           | Less than 5              |

|     |                      |     |   |   |             |
|-----|----------------------|-----|---|---|-------------|
| 107 | Business Manager     | 787 | 4 | 0 | Less than 5 |
| 123 | Administrative Asst. | 525 | 4 | 0 | Less than 5 |

## Appendix E

## Compliance Index of 100 School Districts by Size

**Table A 2: Compliance Index of 100 School Districts by Size**

| Size | Website | ORO Position  | Contact Method | OOR Contact | Form | Policy | Home Page | Tab on Home Page | Steps | Points |
|------|---------|---------------|----------------|-------------|------|--------|-----------|------------------|-------|--------|
| L    | Y       | Asst. Supt.   | Email          | Y           | Y    | N      | N         | Y                | 1     | 9      |
| L    | Y       | Bus Man       | Email          | N           | Y    | Y      | N         | Y                | 1     | 9      |
| L    | Y       | Bus Man       | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| L    | Y       | Bus. Man.     | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| L    | Y       | Bus. Man.     | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| L    | Y       | Pub Relation  | Email          | Y           | Y    | N      | N         | Y                | 1     | 9      |
| L    | Y       | Pub Relation  | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| L    | Y       | Sp. Ed Direct | Mail           | Y           | N    | N      | N         | Y                | 1     | 6      |
| L    | Y       | Supt          | Mail           | N           | Y    | N      | N         | Y                | 1     | 6      |
| L    | Y       | Supt          | Mail           | Y           | Y    | Y      | N         | Y                | 1     | 10     |
| L    | Y       | Exec. Asst.   | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| L    | Y       | Asst Sup      | Email          | Y           | Y    | Y      | N         | N                | 2     | 10     |
| L    | N       | Human Res.    |                |             |      |        |           |                  |       | 0      |
| L    | N       |               |                |             |      |        |           |                  |       | 0      |
| M    | Y       | Bus. Man.     | No contact     |             | Y    | N      | N         | N                | 1     | 5      |
| M    | Y       | Admin. Asst.  | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| M    | Y       | Admin. Asst.  | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| M    | Y       | Asst Supt     | Email          | N           | Y    | N      | N         | Y                | 1     | 7      |
| M    | Y       | Asst. Bus. Mn | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| M    | Y       | Bus. Man.     | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| M    | Y       | Bus. Man.     | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |
| M    | Y       | Bus. Man.     | Email          | Y           | Y    | N      | N         | Y                | 1     | 9      |
| M    | Y       | Bus.          | Email          | Y           | Y    | Y      | N         | Y                | 1     | 11     |

|   |   |              |         |   |   |   |   |   |    |    |
|---|---|--------------|---------|---|---|---|---|---|----|----|
|   |   | Man.         |         |   |   |   |   |   |    |    |
| M | Y | Hum. Res.    | Email   | Y | Y | Y | N | Y | 1  | 11 |
| M | Y | Pub Relation | Email   | Y | Y | Y | N | Y | 1  | 11 |
| M | Y | Supt.        | Email   | Y | Y | Y | N | Y | 1  | 11 |
| M | Y | Supt. Sec.   | Email   | Y | Y | Y | N | Y | 1  | 11 |
| M | Y | Trans/PR     | Email   | Y | Y | Y | N | Y | 1  | 11 |
| M | Y | Asst.Supt    | Email * | N | Y | Y | N | Y | 1  | 8  |
| M | Y | Bus. Man.    | Mail    | N | Y | N | N | Y | 1  | 6  |
| M | Y | Supt.        | Mail    | Y | Y | Y | N | Y | 1  | 10 |
| M | Y | Bus. Man.    | Email   | Y | Y | Y | N | Y | 1  | 11 |
| M | Y | Bus. Man.    | Email   | Y | Y | Y | N | Y | 1  | 11 |
| M | Y | Supt.        | Email   | Y | Y | Y | N | Y | 1  | 11 |
| M | Y | Admin. Asst. | Email   | Y | Y | Y | N | N | 2  | 10 |
| M | Y | Bus. Man.    | Email   | Y | Y | Y | N | N | 2  | 10 |
| M | Y | Admin. Asst. | Mail    | N | Y | N | N | N | 2  | 5  |
| M | Y | Bus. Man.    | Mail    | Y | Y | N | N | N | 2  | 7  |
| M | Y | Bus. Man.    | Mail    | Y | Y | N | N | N | 2  | 7  |
| M | Y | Bus. Man.    | Mail    | Y | Y | Y | N | N | 2  | 9  |
| M | Y | Bus. Man.    | Email   | y | y | y | N | Y | 2  | 11 |
| M | Y | Hum. Res.    | Email   | Y | Y | N | N | y | 2  | 9  |
| M | Y | Supt.        | Mail    | Y | Y | Y | N | Y | 2  | 10 |
| M | Y | Asst Supt    | Email   | N | N | Y | N | N | 3  | 5  |
| M | Y | Purch. Off.  | Mail    | N | y | N | N | N | 5  | 4  |
| M | Y | Bus. Man.    | Mail    | Y | Y | N | N | N | 3' | 6  |
| M | N | Bus Man      | Email   |   |   |   |   |   |    | 0  |
| M | N | Supt.        |         |   |   |   |   |   |    | 0  |
| M | N | Admin. Asst. |         |   |   |   |   |   |    | 0  |
| M | N | Admin. Asst. |         |   |   |   |   |   |    | 0  |

|   |   |               |       |   |   |   |   |   |   |    |
|---|---|---------------|-------|---|---|---|---|---|---|----|
| M | N | Supt.         |       |   |   |   |   |   |   | 0  |
| M | N | Supt.         |       |   |   |   |   |   |   | 0  |
| M | N | Supt.         |       |   |   |   |   |   |   | 0  |
| S | Y | Admin. Asst.  | Email | Y | Y | N | N | Y | 1 | 9  |
| S | Y | Bd. Sec.      | Email | Y | Y | Y | N | Y | 1 | 11 |
| S | Y | Bus Man       | Email | Y | Y | Y | N | Y | 1 | 11 |
| S | Y | Bus. Man.     | Email | Y | Y | Y | N | Y | 1 | 11 |
| S | Y | Bus. Man.     | Email | Y | Y | Y | N | Y | 1 | 11 |
| S | Y | Bus. Man.     | Email | N | Y | N | N | Y | 1 | 7  |
| S | Y | Bus. Man.     | Email | Y | Y | Y | N | Y | 1 | 11 |
| S | Y | Bus. Man.     | Email | Y | Y | Y | N | y | 1 | 11 |
| S | Y | Supt          | Email | Y | Y | Y | N | Y | 1 | 11 |
| S | Y | Supt          | Email | Y | Y | N | N | Y | 1 | 9  |
| S | Y | Supt          | Email | Y | Y | N | N | Y | 1 | 9  |
| S | Y | Supt          | Email | N | Y | Y | N | Y | 1 | 9  |
| S | Y | Supt          | Mail  | Y | Y | Y | N | Y | 1 | 10 |
| S | Y | Supt          |       | N | Y | Y | N | Y | 1 | 8  |
| S | Y | Supt          | Mail  | N | Y | N | N | N | 2 | 5  |
| S | Y | Hum. Res.     | Email | Y | Y | Y | N | Y | 2 | 11 |
| S | Y | Supt          | Email | Y | Y | Y | N | Y | 2 | 11 |
| S | Y | Admin. Asst.  | Mail  | Y | Y | Y | N | Y | 2 | 10 |
| S | Y | Supt          | Mail  | Y | Y | Y | N | Y | 2 | 10 |
| S | Y | Admin. Asst.  | Email | Y | Y | Y | N | N | 3 | 9  |
| S | Y | Admin. Asst.  | Mail  | N | Y | N | N | N | 3 | 4  |
| S | Y | Supt          | None  | Y | N | Y | N | N | 3 | 6  |
| S | Y | Admin. Asst.  | Email | Y | Y | Y | N | N | 3 | 9  |
| S | Y | Asst. Supt.   | Email | N | Y | Y | N | Y | 3 | 8  |
| S | Y | Supt          | Mail  | Y | Y | N | N | Y | 3 | 7  |
| S | Y | Supt          | Mail  | N | Y | N | N | Y | 3 | 5  |
| S | Y | Bus Man       |       | Y | Y | Y | N | N | 5 | 8  |
| S | Y | Pub. Relation | Email | Y | Y | Y | N | Y | 2 | 11 |
| S | N | Admin Asst    |       |   |   |   |   |   |   | 0  |

|   |               |                 |      |   |   |   |   |   |   |   |
|---|---------------|-----------------|------|---|---|---|---|---|---|---|
| S | N             | Admin<br>Asst   |      |   |   |   |   |   |   | 0 |
| S | N             | Admin.<br>Asst. |      |   |   | Y |   |   |   | 0 |
| S | N             | Bus Man         |      |   |   |   |   |   |   | 0 |
| S | N             | Bus Man         |      |   |   |   |   |   |   | 0 |
| S | N             | Bus Man         |      |   |   |   |   |   |   | 0 |
| S | N             | Bus Man         |      |   |   |   |   |   |   | 0 |
| S | N             | Bus Man         |      |   |   |   |   |   |   | 0 |
| S | N             | Bus.<br>Man.    |      |   |   |   |   |   |   | 0 |
| S | N             | Bus.<br>Man.    |      |   |   |   |   |   |   | 0 |
| S | N             | Bus.<br>Man.    |      |   |   |   |   |   |   | 0 |
| S | Y             | Supt            | Mail | N | Y | Y | N | Y | 1 | 8 |
| S | N             | Supt.           |      |   |   |   |   |   |   | 0 |
| S | N             | Supt.           |      |   |   |   |   |   |   | 0 |
| S | N             | Bus Man         |      |   |   |   |   |   |   | 0 |
| S | N             | Bus Man         |      |   |   |   |   |   |   | 0 |
| S | N             | Asst.<br>Supt.  |      |   |   |   |   |   |   | 0 |
| S | No<br>Website | Bus Man         |      |   |   |   |   |   |   | 0 |
| S | N             | Bus Man         |      |   |   |   |   |   |   | 0 |



## Appendix F

## Most Common Record Requested by Respondents

**Table A 3: Most Common Record Requested by Respondents**

| District | No. of Requests | No. of Appeals to OOR | Most common record requested  |   |  |
|----------|-----------------|-----------------------|---|---|--|
|          |                 |                       | 1st   | 2nd   | 3rd  |
| 504      | 102             | 3                     |   |   |  |
| 503      | N/A             | 0                     |   |   |  |
| 505      | 60              | 0                     | Contracts   | Tax information   | Public utility information                         |
| 516      | 40              | 0                     | Vendor Contracts  | Board meeting DVD   | Employee Contracts                                 |
| 224      | 45              | 0                     | Contracts   | Bid documents   | Tax information                                    |
| 216      | Hundreds        | 2                     | Various   |   |  |
| 206      | 75              | 0                     | Construction related documents<br>Contracts with non-union construction contractors | Personnel related info (contracts, benefits)<br>Contracts with vendors (copier, security) | Budget related items<br>Employee contracts         |
| 229      | 20              | 0                     |   | Employee sick and personal days   |  |
| 235      | 20              | 1                     | Copier lease<br>Tax Collector   |   |  |
| 202      | 20              | 3                     | Statements<br>Certified payrolls for construction forces                            | Retiree Information   |  |
| 218      | 200             | 5                     |   | Budget information  | Legal Bills<br>Copier and Transportation contracts |
| 205      | 137             | 0                     | Salaries<br>School construction   | Contracts   | Health benefit information                         |
| 219      | 100             | 8                     |   | Debt Service  | Employee demographic information                   |
| 227      | N/A             | 4                     | Taxes<br>Teachers' contracts  | Contracts<br>Earned income tax collected  | Superintendent contract                            |
| 203      | 30              | 0                     |   | Companies wanting to see lease agreements   |  |
| 214      | 45              | 0                     | Copy/Print<br>Contracts<br>Employee   |   | Teacher contracts                                  |
| 144      | 9               | 0                     | Contracts   | Budget information  | Board motions                                      |
| 221      | 30-35           | 1                     |   |   |  |
| 237      | N/A             | 0                     |   |   |  |

|     |     |   |  |  |  |
|-----|-----|---|--|--|--|
| 215 | 9   | 0 | Contracts  |  |  |
| 128 | 80  | 1 | Contracts  | Bid documents                                      | Delinquent Real estate records         |
|     |     |   | Teacher addresses and phone numbers              |  |  |
| 140 | 25  | 0 |  | Bid sheets   | Tax records                            |
| 143 | 25  | 0 |  |  |  |
| 116 | 96  | 0 | Contracts  | Copies of bills                                    | Student scores                         |
| 108 | 15  | 0 | Prevailing wage                                  | Salary information                                 |  |
|     |     |   |  | Public employee information                        | Salaries of employees                  |
| 115 | 6   | 0 | Utility information                              |  |  |
|     |     |   | Tax Collector                                    |  |  |
| 124 | 40  | 0 | Statements                                       | Payroll information                                |  |
|     |     |   | Employee   |  | Employee evaluation                    |
| 118 | 30  | 1 | Contracts  | Budget information                                 |  |
|     |     |   |  | Sports and extra-curricular information            | Employee information                   |
| 121 | 15  | 0 | Budget information                               | Info on teachers such as fair share, contract etc. | Vendor information i.e. food service   |
| 145 | 7   | 0 | Contracts  |  |  |
| 105 | N/A | 0 |  |  |  |
|     |     |   |  |  | Student record requests from attorneys |
| 142 | 16  | 0 | Personnel requests                               | Copy machine contracts                             |  |
|     |     |   |  | Names, job titles, and email addresses of board    | Email addresses of employees           |
| 102 | 58  | 0 | Tax information                                  | Collective bargaining agreements                   |  |
|     |     |   | Names/addresses of current and retired employees |  |  |
| 101 | 19  | 0 | Teacher addresses and phone numbers              |  |  |
| 230 | 6   | 0 |  |  |  |
|     |     |   |  |  | Staff email addresses                  |
| 127 | N/A | 0 | Employment                                       | Budget information                                 |  |
| 107 | N/A | 0 |  |  |  |
|     |     |   |  | District employees addresses                       | Salaries of employees                  |
| 123 | 12  | 0 | Budget   |  |  |

## Appendix G

## Office of Open Records Final Determinations by District Size

Table A 4: Office of Open Records Final Determinations by District Size

| Size | Date       | Req. No. | Granted     | Denied      | Technicality           | Notes   |
|------|------------|----------|-------------|-------------|------------------------|---|
| M    | 10/25/2010 | 1        | 1307- fee   |             |                        | District can't charge excessive fees  |
| M    | 6/12/2009  | 1        | 708(b)6 - P | 708(b)6 - P |                        | Code 'E' of 403(b) may not be redacted  |
| M    | 3/26/2010  | 1        |             | 1307 -fee   |                        | District did not charge excessive fee   |
|      | 9/25/2012  | 1        |             |             | 1101 - Dismissed       | request did not include copy of request and/or district response              |
| M    | 10/16/2009 | 1        | 708 (b)6    |             |                        | addresses of private contractors; district reprimanded-no ORO                 |
|      | 7/16/2009  | 1        | 1307 -fee   | 1307- fee   | 1101- records released | District can charge for only records requested does not have to email,        |
| M    | 4/5/2011   | 1        |             |             | 1101- Dismissed        | Copy of original request not included   |
|      | 5/11/2011  | 0        |             |             | 1101 - Dismissed       | Timeline of submitting proper appeal not met -15 days                         |
|      | 5/11/2011  | 0        |             |             | 1101 - Dismissed       | same  |
|      | 5/11/2011  | 0        |             |             | 1101 - Dismissed       | same  |
|      | 5/11/2011  | 0        |             |             | 1101 - Dismissed       | same  |
|      | 3/9/2009   | 1        |             | 708(b)3     |                        | security analysis does not require release & 708(b)10 predecisional           |
|      | 11/29/2010 | 1        |             | 708(b)6 - P |                        | district provided addresses upon appeal, <i>Dept. of Cons. &amp; HR</i> cited |
|      | 4/28/2011  | 0        |             |             | 1101 - Dismissed       | Timeline of submitting proper appeal not met -15 days                         |
| M    | 6/25/2012  | 1        | 708(a)1 - P |             | 703 -request           | Burden is on district   |

|   |            |   |                       |                 |                  |   |
|---|------------|---|-----------------------|-----------------|------------------|---|
|   |            |   |                       |                 | was question     | to prove record is not public,  |
| M | 3/26/2010  | 1 | 701                   |                 |                  | District ignored request, if records are electronic then must email   |
|   | 5/5/2010   | 1 | 701                   |                 |                  | District ignored request, warned of financial penalties               |
|   | 11/19/2012 | 1 |                       |                 | 1101 - Dismissed | Did not include copy of district response                             |
| M | 6/16/2010  | 1 |                       | 708(b)10        |                  | Predecisional budget deliberations                                    |
| M | 8/10/2010  | 1 |                       | 708(b)10        |                  | Predecisional interview information, criteria records don't exist     |
| M | 5/8/2009   | 1 |                       |                 | 1101- Dismissed  | Timeline of submitting proper appeal not met -15 days                 |
| M | 3/1/2010   | 1 |                       | 708(b)27        |                  | Attorney - client privilege   |
|   | 10/12/2012 | 0 |                       |                 | 1101- Dismissed  | request did not include copy of request and/or district response      |
|   | 10/15/2012 | 0 |                       |                 | 1101- Dismissed  | failed to address agency grounds for denial                           |
| M | 9/15/2010  | 1 | 701 - ignored request | 708(b)7         |                  | recommend letters, evals not public, district didn't respond properly |
|   | 6/9/2010   | 1 | 701                   |                 |                  | District ignored request, court of common pleas, district appealing   |
|   | 1/23/2012  | 1 | 703                   |                 |                  | Record request was sufficiently specific                              |
|   | 3/30/2012  | 1 |                       | 705             |                  | Record does not exist   |
|   | 4/10/2012  | 1 | 701-ignored request   |                 |                  | District didn't respond to request                                    |
| M | 2/1/2011   | 1 |                       | 703(b)1 - FERPA |                  | Bus video not public record, would identify students                  |
|   | 1/2/2013   | 1 |                       |                 | 1101 - Dismissed | Timeline of submitting proper appeal not met -15 days                 |

|   |            |   |                       |                        |                  |   |
|---|------------|---|-----------------------|------------------------|------------------|---|
| M | 6/10/2011  | 1 | 703                   |                        |                  | District denied stating requester wanted information not records        |
|   | 11/10/2009 | 1 |                       | 708(b)7-employee rec   |                  | District denied release of 5 page list of Supt.'s contract              |
|   | 12/8/2009  | 1 |                       | 705                    |                  | record does not exist   |
|   | 3/19/2010  | 0 |                       | 708(b)7-employee rec   |                  | District denied release of 5 page list of Supt.'s contract              |
|   | 4/6/2010   | 0 | 102- not attny prvldg |                        |                  | Board member read a letter aloud, becomes public record                 |
|   | 4/8/2010   | 1 |                       | 705- list of grants    |                  | Record does not exist   |
|   | 4/12/2010  | 0 |                       | 705 - job descriptions |                  | Record does not exist   |
|   | 12/14/2010 | 1 |                       | 102                    |                  | District did not possess construction records, reprimanded for appeals  |
| L | 12/13/2010 | 1 | 703(b)10              |                        |                  | District did not establish internal, or attny-client privilege          |
|   | 6/14/2012  | 1 | 102                   |                        |                  | Band emails fall under activities of the district                       |
|   | 3/19/2013  | 1 |                       |                        | 1101 - Dismissed | Appeal filed after 15 days  |
| L | 3/6/2009   | 1 | 703(b)17              |                        |                  | District cited non-crm invest., employee was not part of investigation  |
|   | 5/25/2012  | 1 |                       | 705                    |                  | Budget information from different departments did not exist             |
|   | 7/3/2012   | 1 | 902(b)                |                        |                  | District did not respond in a timely manner after 30 day extension      |
| L | 6/16/2011  | 0 |                       | 708(b)15               |                  | list of class rosters with grades and pass/fail; not part of transcript |
|   | 8/23/2011  | 0 |                       | 708(b)15               |                  | resubmitted request denied by OOR, overturned by Court of CP            |

|   |           |   |             |                     |                  |   |
|---|-----------|---|-------------|---------------------|------------------|---|
|   | 9/13/2011 | 1 |             |                     | 1101 - Dismissed | Failed to file proper paperwork                                       |
| L | 3/3/2011  | 1 | 708(b)8-P - | 708(b)6 - P         |                  | MOU must be released as public record without addresses               |
|   | 8/11/2011 | 1 |             | 306 - don't use RTK |                  | Parent request report card, ignored by district, should use FERPA     |
|   | 5/7/2012  | 1 | 708(a)1 - P |                     |                  | District did not meet burden of non-qualified teachers                |
|   | 5/7/2012  | 1 |             |                     | 1101 - Dismissed | Failed to file proper paperwork                                       |
|   | 5/7/2012  | 1 |             |                     | 1101 - Dismissed | Failed to file proper paperwork                                       |
| L | 5/4/2011  | 0 | 701         |                     |                  | District ignored request over charter schools                         |
|   | 4/25/2011 | 0 |             |                     | 1101 - Dismissed | Failed to file proper paperwork                                       |
|   | 6/8/2011  | 0 |             |                     |                  | Multiple requests, district failed to respond, appealed to Com. Court |
|   | 12/1/2010 | 1 | 701         |                     |                  | District ignored request for policies and procedures                  |
|   | 4/7/2011  | 0 |             |                     | 1101 - Dismissed | Extension for information tied to ongoing case                        |
|   | 4/7/2011  | 0 |             |                     | 1101 - Dismissed | Extension for information tied to ongoing case                        |
|   | 4/7/2011  | 0 |             |                     | 1101 - Dismissed | Extension for information tied to ongoing case                        |
|   | 4/22/2011 | 0 |             |                     | 1101 - Dismissed | Failure to file proper paperwork                                      |
| L | 11/8/2011 | 1 | 701         |                     |                  | District has burden to prove records not public, failed               |
|   | 7/23/2012 | 1 |             |                     | 1101 - Dismissed | Failed to provide agency request and/or agency response               |
| L | 2/8/2010  | 1 |             |                     | 703 - Dismissed  | requester did not challenge districts contention of                   |

|   |            |   |             |                   |                   |   |
|---|------------|---|-------------|-------------------|-------------------|---|
|   |            |   |             |                   |                   | specificity   |
| L | 5/15/2009  | 1 |             | 705               |                   | district did not have to email records that don't exist, phone ext.     |
|   | 7/8/2009   | 1 | 703(b)1, 6  |                   |                   | OOR granted release of home addresses of fair share, CCP                |
| L | 4/3/2009   | 1 |             | 102<br>_FERPA     |                   | Parent wanted gifted scores with names redacted                         |
|   | 4/10/2009  | 1 | 703(b)10(A) | 703- not specific |                   | Many emails requested, district did not prove predecisional,            |
|   | 4/8/2009   | 0 | 703         | 705               |                   | Burden on district to prove public record, record doesn't exist         |
|   | 4/8/2011   | 1 |             |                   | 1101 - Dismissed  | Failure to file proper paperwork  |
|   | 11/2/2012  | 0 |             |                   | Dismissed as moot | District denied enrollment, after appeal was filed, record released     |
| M | 7/19/2011  | 1 |             |                   | Dismissed as moot | District denied tax info, once appealed they issued record              |
| M | 10/1/2009  | 1 | 708(b)7     |                   |                   | Interview ratings and other records, district failed to be specific     |
| M | 12/15/2011 | 0 |             | 705               |                   | Records do not exist, multiple legal requests                           |
|   | 5/10/2010  | 1 | 708(b)6 - P | 705 - P           |                   | removal of Supt. invoices, some records nonsexist, district failed spec |
|   | 5/21/2010  | 1 |             | 708(b)17          |                   | Supt removal, non-criminal investigative records                        |
|   | 2/1/2010   | 0 |             |                   | 1101- dismissed   | Failed to meet timelines  |
| M | 4/25/2011  | 1 | 705         |                   |                   | District claim that AFT payments do not exist as a vendor               |
|   | 5/18/2009  | 1 |             | 705               |                   | Supt. Insurance info future records don't exist                         |
| M | 4/30/2010  | 1 |             | 705               |                   | Travel records do not exist   |

|   |            |   |             |            |                           |  |
|---|------------|---|-------------|------------|---------------------------|--|
|   | 10/3/2012  | 1 |             |            | 1101 -<br>Dismissed       | Failed to meet<br>timelines  |
| M | 3/29/2011  | 1 |             |            | 1101 -<br>Dismissed       | Requester asked for<br>redactions by<br>mistake, district<br>ignored request       |
|   | 8/5/2011   | 1 |             |            | 1101 -<br>Dismissed       | Failure to supply<br>sufficient information  |
|   | 6/19/2009  | 1 | 506(d)1     |            |                           | Agency must access<br>records held by 3rd<br>parties; tax rolls                    |
|   | 10/18/2010 | 1 |             | 305        |                           | Payroll record<br>request, wanted for<br>Com Court Decision,<br><i>DCNR v. OOR</i> |
| S | 4/21/2010  | 1 |             | 705        |                           | Requester not<br>entitled to 'certificate<br>of completeness'                      |
| S | 3/11/2009  | 1 |             | 708(b)7&30 |                           | Wanted coach's<br>roster, evaluation<br>plan resident<br>addresses, Com<br>Court   |
| S | 2/4/2011   | 0 |             |            | 1101-<br>Dismissed        | Premature appeal,<br>district had 5<br>business days,<br>Christmas break           |
|   | 2/4/2011   | 0 |             |            | 1101-<br>Dismissed        | same   |
|   | 1/14/2011  | 0 |             |            | 1101-<br>Dismissed        | same   |
|   | 1/14/2011  | 0 |             |            | 1101-<br>Dismissed        | same   |
|   | 5/6/2011   | 0 | 708(a)1     |            |                           | Burden on district,<br>lost in mail, must<br>resend                                |
|   | 4/15/2009  | 1 |             | 705        |                           | record did not exist,<br>unsuccessful sports<br>teams policy, CP                   |
|   | 11/9/2010  | 0 |             |            | 1101-<br>Dismissed        | Dismissed as moot,<br>requester did not pick<br>up records                         |
|   | 11/9/2010  | 0 | 708(a)1 - P |            | 1101-<br>Dismissed -<br>P | District needs to<br>provide benefit info,<br>moot about salary-<br>provided       |
|   | 11/9/2010  | 0 |             |            | 1101-<br>Dismissed        | Premature appeal, did<br>not give district 30<br>day extension                     |
|   | 11/19/2012 | 1 |             | 703        |                           | Nonspecific request,   |



|   |            |   |                    |              |                   |  |
|---|------------|---|--------------------|--------------|-------------------|--|
|   |            |   |                    |              |                   | emails without time frame  |
| S | 5/28/2010  | 1 |                    | 705          |                   | Record does not exist, adaptations for parent participation in IEP       |
| S | 7/20/2011  | 0 | 708(b)10 - P       | 708(b)26 - P | Dismissed as moot | District didn't prove confidential, goods& services, moot after bid      |
|   | 8/5/2011   | 0 | 705                |              |                   | Agency made no attempt to get record from 3rd party                      |
|   | 12/16/2011 | 0 |                    |              | 1101 - Dismissed  | Filed appeal after 15 days   |
|   | 1/3/2012   | 0 | 705                |              |                   | Agency made no attempt to get record from 3rd party                      |
|   | 3/1/2012   | 0 | 708(a)             |              |                   | Agency failed to meet burden   |
|   | 6/20/2012  | 0 |                    |              | 1101 - Dismissed  | Filed appeal after 15 days   |
|   | 11/1/2013  | 0 |                    | 705          |                   | District should respond to improper request but record doesn't exist     |
|   | 2/5/2013   | 0 | 708(a)             | 705          |                   | District must grant record request even if it repeats, record doesn't ex |
|   | 3/14/2013  | 0 | 705                |              |                   | Record exists with 3rd party contractor                                  |
| S | 2/5/2011   | 1 | 708(b)10, (b)6 - P | 705          |                   | District cant exempt at appeal, no support, record doesn't exist         |
| S | 4/5/2011   | 1 |                    |              | 1101 - Dismissed  | Filed appeal after 15 days   |
| S | 8/17/2012  | 0 |                    |              | 1101 - Dismissed  | Filed appeal after 15 days   |
|   | 8/17/2012  | 0 |                    |              | 1101 - Dismissed  | Filed appeal after 15 days   |
|   | 6/1/2011   | 1 |                    |              | 1101- Dismissed   | District didn't respond to request but appeal filed after 15 days.       |

Requester Number 1 – single request

0 – multiple requests