



PENNSYLVANIA STATE ASSOCIATION OF BOROUGHES

**PA House of Representatives
State Government Committee
Senate Bill 411**

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Senate Bill 411 – Refining the Right-To-Know law

Good Morning members of the House State Government Committee. I am Ed Troxell the Director of Government Affairs for the PA State Association of Boroughs. For over a century PSAB has been representing the interests of Pennsylvania's boroughs. From prompting and supporting the first successful consolidation of one of Pa's municipal codes, Pa.CS Title 8 The Borough Code to the uniform collection of Local Earned Income Tax through Act 32 of 2008, PSAB has demonstrated its memberships ability to tackle technical often complex issues and address them with success. We sense a similar challenge awaits us regarding the refining of Act 3 of 2008, the Right-To-Know law.

Prior to January 1, 2009 the guiding maxim for the acquisition of public records was that the individual(s) making a request were encumbered with the burden of proof that their requested record was indeed a "public record" available upon request. By fundamentally flipping that burden of proof to the respective state or local agency/government, Act 3 simply put, created a:

Presumption of Openness

- Every record of an Agency is presumed to be public.
- Agency bears burden to prove record is not public.

This switch from record to agency established a dynamic constraining any agency possessing records to determine how best to prepare for requests and how to fulfill those request within a stated protocol enacted through Act 3. This would require a level of sophisticated adjustment by agencies to gain compliance. In doing so, the universe of "public records" would undoubtedly be expanded by agencies as well. When one considers that now agencies must capture, categorize and catalogue any and all information pertaining to their jurisdiction the reasons for returning to the language of Act 3 for refinements is well warranted.

Boroughs adapting to Right-to-Know law

Since the passage of Act 3 in 2008 and its subsequent enactment in 2009, the Right-to-Know law has had a definitive impact on our commonwealth's boroughs. In preparing for the anticipated requests, the management of their documentation, and the education to administer the Act appropriately at the local level, boroughs have been steadfast. PSAB continually works with its members to provide vital educational resources, partnering with the Office of Open Records and other associations to ensure an effective implementation of Act 3. Along the way boroughs have adapted to the law and also have identified areas where some work on the language may indeed enhance the goal of the Right-to-Know law.

Seven years have passed as boroughs have functioned under Act 3. They have adapted to the demands of the Act and its impact with the public. Boroughs have appointed their Right-to-Know officers, they have developed standardized request forms, instituted lawful fees all while pursuing the necessary training/education resources needed to remain in compliance. However, what has occurred as well, is a discrete element of the public making requests has manipulated the Act into a profit making venture at the expense of taxpayers.

Specifically, our boroughs have been confronted with requests made by commercial interests seeking to data mine a potential customer base at the taxpayers' expense. Several members have been inundated by out-of-state requests for records as well. Ranging from research requests of students in California to criminal attorneys in Florida, the surge of frivolous out-of-state requests since the enactment of Act 3 certainly justifies examination of the Right-to-Know law and how self-interested requestors have gamed the system to a profit-driven end.

Case Study

To illustrate how profit driven requestors are using Act 3 to their advantage I want to use a case study of an average borough. I will avoid the detailed requestors and the particular community in this case (data on file). The borough, located in Centre County, is typical for our membership, it boasts roughly 1,000 residents. It is a little over one square mile, yet serves as a cross roads for two state routes, hosts an urban grid pattern downtown and residential areas. The borough also has a large creek traversing the length of the community which acted as an industrial hub in the past. The borough employs 3 full-time administrators and 10 part-time positions acting with limited hours.

In 2014 the borough received 14 requests, 10 of which were from parties seeking information of a commercial nature (building permits, tax collector statements), 1 request from a newspaper and 3 requests from local residents. Last year 2015, there were 13 requests 9 commercial and 2 out of state seeking financial information on borough employees. Lastly for the year 2 requests from an out of state non-profit. Yet to demonstrate the burden of just 2 requests from an out of state non-profit it is best to let the administrator of the borough provide the committee the background:

“The most annoying request in 2015 are the 2 from California Common Sense (non-profit) from Mountain View, CA. The first request on March 23, 2015 asked for borough budgets from 2008-2015 and Annual Financial Reports from 2008-2014. This request explained they were non-profit and requested we waive all fees. I refused to waive the fee and explained that the cost to photocopy the 282 pages at \$0.25 per page is \$70.50 and there would also be mailing costs. They responded that their budget didn't allow for this cost so to forget the request. The second request came on August 7, 2015 explaining they only needed the budget reports from 2008-2015 and could the costs be reduced. I responded that the cost would still be \$0.25/copy but since the number of pages was reduced the cost would now be \$33.15. Again I received a response that unfortunately their budget is very limited at this time and they will get back to me if they have an appropriate budget for the copies.

Since I am the only one in the office trying to do all the other work that requires my attention, I don't believe we should have to be bothered with these ridiculous requests. I have no problem taking time to answer requests from residents or to share information with other local groups. However, I see no reason why the residents in my Borough have to pay me to respond to some request from another state so the people making the request can either make money by harassing our residents to buy something or to be paid with money from the Federal Government as most non-profits are to do some foolish study that no one reads or cares about.”

While you can read the irritated tone from the borough, one has to understand the burden that has resulted from those seeking a commercial end and their manipulation of the law in such. This further reinforces why PSAB and its members seek changes to Act 3 which will indeed refine the law thus making it more effective.

Refining Right-to-Know

In 2014 boroughs adopted an association-wide resolution (2014-9) which read as follows:

BE IT RESOLVED, that PSAB support Senate Bill 444* and similar legislation which comprehensively amends the Right-to-Know law; and

BE IT FURTHER RESOLVED that PSAB seek amendments to the Right-to-Know law that capture municipal costs & administrative expense resulting from requests from commercial interests.

** The above resolution language itself supports a **previous proposal**, we continue to support RTK reform efforts such as the latest legislative proposal.*

This resolution engages PSAB through its legislative agenda to continue to seek the changes in Act 3 which will refine the efficacy of the law. We further believe that **Senate Bill 411** (PN1335) is the appropriate vehicle for moving the Act forward to address a host of clarifications necessary to any new law following seven years of implementation and practice.

As documented in our borough case study, addressing our frequent **commercial requests** is paramount, this is reinforced in our *PSAB Resolution 2014-9*. The bill appropriately defines “commercial purpose” (P2, lines 10-22) thereby identifying the attributes of a request to be considered as profit driven. It continues in that it clarifies in the occurrence of these requests, the appropriate levels of “reasonable standard charges” (P21, lines 8-22) for administrative functions necessary to fulfill those type requests. It should also be noted that under this section, *no administrative fees* may be charged for the first hour of search & retrieval however, that does not exempt requisite postage and duplication fees.

In all, **PSAB is supporting SB411** (PN1335) as a necessary and timely refinement to the Right-to-Know law that will enable local governments to control expenses at the local level and thereby efficiently manage their residents’ tax burden. We further understand the necessity to enact these changes as swiftly as possible to provide clarity and direction in complying with requests. We would also note that the nature of information storage and management is constantly changing and as a result we must anticipate the dynamic nature of Act 3. In closing, PSAB on behalf of its members wants the PA General Assembly to know that we look forward to working together throughout this entire process and the future to craft a most clear and practical approach to PA’s Right-to-Know law. Thank you.