



**TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF
TOWNSHIP SUPERVISORS**

**BEFORE THE
HOUSE STATE GOVERNMENT COMMITTEE**

ON

SB 411 (*PN 1335*)

PRESENTED BY

**ELAM M. HERR,
ASSISTANT EXECUTIVE DIRECTOR**

MARCH 22, 2016

HARRISBURG, PA

Chairman Metcalfe and members of the House State Government Committee:

Good morning. My name is Elam Herr and I am the assistant executive director for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,454 townships in Pennsylvania represented by the Association.

Townships comprise 95 percent of the Commonwealth's land area and are home to nearly 5.4 million Pennsylvanians. These townships are very diverse, ranging from rural communities with fewer than 200 residents to more populated communities with populations approaching 70,000 residents. Thank you for the opportunity to testify today on an issue that is of great importance to townships of all sizes across this Commonwealth.

The Association continues to be strongly supportive of open government and worked to promote what we originally believed to be a fair and balanced Right-to-Know Act, Act 3 of 2008. However, since the act took effect in January 2009, the act has been interpreted by the Office of Open Records and the courts differently. In addition, the inability to recover the costs of compliance has proven to be a burdensome mandate for many of our communities, so much so that the need for reform has become a top priority for our members and their taxpayers.

Since its implementation, townships across the state have expressed concern with certain aspects of the law that they feel are burdensome. These concerns have generally covered two areas, 1) the inability to recover costs incurred by requesters which instead must be paid by the taxpayers and 2) privacy concerns over certain types of sensitive information that are public under Act 3. **Senate Bill 411** (*PN 1335*) would make significant strides to address these issues and we applaud this committee for hearing our comments today. While it won't solve all of the challenges with this law, it would make major improvements

Commercial requests. We believe SB 411 would significantly improve on the current law by allowing agencies to require a requester to certify in writing whether a request is for a commercial purpose on a form that would be developed by the OOR in Section 707(d). The bill would authorize local agencies to assess search, review, retrieval, and redaction fees, including staff time, for records requested for a commercial purpose in Section 1307(g.1), which would be narrowly defined in Section 102 and would exempt media and educational or scholarly requests. These charges would be limited by Section 1307(g.1) to no more than the hourly wage of the lowest-paid employee capable of searching, retrieving, reviewing, and providing for redaction of the information necessary to comply with the request. We believe this would be a significant improvement over the current law and would reduce the costs taxpayers must shoulder that provide no benefit to the community. While this provision would be helpful to our communities, we can agree to the waiver for the first hour of search and retrieval time for all commercial requests submitted by a single requester over a 90-day period in Section 1307g.1(3).

Under this issue, the number one complaint is that businesses and vendors are requesting copies of building permits and other documents for solicitation purposes. We don't know whether these entities plan to sell satellite dishes, yard services, pools, etc. And to be honest, that is not what concerns us. What does matter to us is that these municipalities can only charge for copying and mailing costs and not the staff time needed to fulfill these regularly occurring requests. Taxpayers are currently being forced to subsidize the marketing expenses of these profit-making entities.

We hear the same complaint repeatedly from townships across the state. In fact, our members adopted a resolution specifically requesting the ability to ask if a document will be used for resale, business solicitation, or financial gain and, if so, to eliminate the requirement that we respond to such requests. With that said, simply providing the option of charging applicable fees would be beneficial and take some strain off of municipal budgets and their taxpayers.

Other recent examples of statewide solicitations include companies wanting email only copies of all purchases since 2012, information on unclaimed checks, and arrest records. In all of these examples, the records were requested so they could be sold on a for-profit website.

It is a true public policy question of whether the commercial sector should be able to use data generated for a public purpose and at public expense for some commercial end. Under the current law, there are no limits on the use of government data that is considered to be a public record, nor are townships able to charge tiered fees when this information is acquired for commercial purposes. Many citizens are unhappy when they apply for a permit only to discover that their application was later acquired by a business under the RTKL and used for solicitation or marketing purposes. Keep in mind that the federal government has for many years had a tiered status for fees for open records (*freedom of information*) requests.

Finally, in Section 1307(h) the bill would authorize agencies to require prepayment if requests exceeded \$50, which is a reduction from the current \$100 level. Under the current OOR fee schedule, a request must exceed 400 pages of one-sided black and white copies in order to qualify for prepayment. This amendment would cut this amount in half and allow for better recovery of costs. We support this improvement and ask that you consider our previous suggestions for cost recovery.

Inmates. Another major public policy question is the degree to which convicted, incarcerated individuals should be able to make use of the Right-to-Know Law, which is almost exclusively at taxpayer expense. According to the OOR's recently released report, inmates filed 1,414 appeals in 2015, which is 48 percent of all appeals and more than any other requester group. Certainly information that relates to inmates, their case, and their care should be reasonably accessible to them. However, inmates use the time on their hands to submit voluminous requests, often to the local government responsible for putting them behind bars. At times it is a means to harass the police officer who brought

them to justice and in other instances, serves simply to create havoc at taxpayers' expense. As such, we can support the addition of Section 508 to address this issue.

Another recent example involves an inmate who is well known as a serial frivolous litigator and requester. This individual recently filed a series of appeals with the Office of Open Records and many of our members received notice of these appeals. However, when our members reviewed their files, none of them had ever received a request from this individual or on the subject matter in the alleged request and promptly notified the OOR. Some of the alleged requests involved clearly phony names. This matter is waiting to be resolved, but so far has wasted taxpayers' funds at both the local and state level and will continue until the issue is fully resolved.

Currently a federal prisoner, this individual, Jonathan Lee Riches, was responsible for hundreds of the appeals filed with the OOR in 2015.

Identity theft and fraud concerns under the RTKL. There are real concerns with disclosing local government financial account numbers due to the potential for fraudulent use of this information. SB 411 would address this issue and exempt banking account and routing numbers, credit card numbers, and passwords from disclosure in Section 708(b)(31). We believe that this change will protect taxpayer funds while keeping the substance and content of financial documents in the open.

Personal financial information (*definition in Section 102 and Section 708(b)(6)*) needs to be protected. We believe that a local government's financial information is, and should remain, fully open to public scrutiny. This includes the salaries paid to employees, benefits provided to employees, and any reimbursable expenses. However, once we pay our employees, these funds become the employee's property and, at this point, employee payroll deductions and taxes should be shielded from public view. SB 411 would make this appropriate clarification to the definition of "personal financial information," while ensuring that salaries, health plans, retirement plans, and other benefits paid for by the township remain open. The courts have already ruled that personal tax information is protected under federal law and SB 411 would add this language to the statute itself, while clarifying that aggregated data of employer or employee costs of retirement benefits, health care benefits, and other benefits remains open.

While we are not asking for the bill to be further amended at this time, our membership strongly supports taking additional steps to protect our employee's personal information, such as age, gender, race, date of birth, and signature. For safety and to prevent identity theft, public employees should be entitled to privacy for their personal information.

Party to litigation. Since 2009, our members have reported that individuals are submitting requests that look like litigation discovery or simply a legal fishing expedition. These are expensive requests to fulfill due to the amount of research required and in many cases, staff is doing the legal team's work for them paid for by the taxpayer.

As such, we support language in the Section 506 that would allow an agency to deny requests to a party that is involved in pending litigation or which was previously made in discovery. This provision would not impose on anyone's rights, but simply aim to prevent continued abuse of the system at taxpayers' expense.

Appeals process. The extension of the appeals timeframe from 15 to 20 business days in Section 1101 is reasonable, along with the clarification that this timeframe runs from the postmark or email date of the agency's response or a deemed denial, whichever comes first.

This section would also clarify that the appeal must include a copy of the original request, the agency denial, and other information the requester believes to be relevant. As discussed earlier, our members have recently experienced appeals made to the OOR for which no request had been made.

Other provisions. We can support many of the other provisions in the bill that we believe would be helpful clarifications. This includes the agency registration of the open-records officers, and clarifications to written requests. The proposed requirement that written requests include the name and physical mailing address of the requester would be helpful to agencies that are attempting to respond to a request.

We support Section 708(b)(10) to clarify that records made available at public meetings for deliberation by a quorum shall be a public record regardless of whether a vote occurred at that meeting. We also support the clarification of the time for response to requests submitted in various formats in Section 901. We agree with the deemed denial clarification if the agency fails to send a response within 30 days following the five business days allowed, unless the requester has agreed in writing to an extension beyond the 30 days in Section 902. And we support the clarification that an agency would not be required to transcribe a proceeding, an expensive undertaking, solely for the purpose of responding to a request in Section 707.

In closing, we ask that you consider these important changes to the Right-to-Know law that we believe balance the public's right to open access with the agency's need to responsibly manage taxpayer's funds. We encourage you to support SB 411.

Thank you for your consideration of the concerns of township government concerning the RTKL. We look forward to a continued working relationship with you on this important issue as you move towards updating this law.