



March 9, 2021

TESTIMONY BEFORE HOUSE STATE GOVERNMENT COMMITTEE

Good afternoon, Chairman Grove, Madame Chair Davidson, and members of the House State Government Committee.

My name is Cate Barron and I'm the president of PA Media Group, parent company of The Patriot-News newspaper and the PennLive.com website. Our organization is also a member of the Pennsylvania NewsMedia Association. Thank you for allowing me to offer testimony on the difficulties facing news gathering during the pandemic, the Office of Open Records, and the Right-to-Know Law.

I speak from the perspective of 40 years as a journalist in Pennsylvania. My career started at WMRF Radio in Lewistown, my hometown. I went on to report for The Lewistown Sentinel, then to Harrisburg for editing jobs at The Patriot and PennLive.

Rarely has a day gone by during my years as an editor, and since 2019 as a publisher, that I haven't heard from readers on a wide variety of issues. But never more so than in the past year, as people desperately search for information about COVID-19, its health and economic fallout, and how their government is responding.

One year ago, our newsroom shifted a substantial portion of its modest reporting resources to covering the pandemic. And we watched PennLive's audience grow by 74 percent in the months to follow, making it the most read news and information website based in Pennsylvania. Ten million unique visitors across all 67 counties, and beyond, now come to PennLive every month. Powering much of this unprecedented growth is interest in news about the public health crisis affecting everyone's lives. Coverage on COVID represented one-quarter of our 261 million content views last year.

What's been top of mind for your constituents? Information about county lockdowns and reopenings, business restrictions and waivers, COVID cases in nursing homes, the status of stimulus checks, school closings, problems accessing unemployment benefits and vaccine distribution locations. Our searchable maps, including one charting cases in each of Pennsylvania's 2,169 ZIP codes, were among the highest read posts of the year. People want and need this vital information. They're relying on trusted media sources more than ever.

While PennLive may have the state's biggest online audience, we're not perceived as too big for readers to fire off an email or pick up the phone and give us a piece of their mind. We welcome that engagement. My testimony will share some of the frustrations we're hearing from the public and that of Pennsylvania journalists as they contend with obstacles to getting information on the impact of the pandemic as well as changes needed to improve the Right-to-Know Law and enhance government transparency.

The pandemic's impact on news gathering

As this committee is aware, state agencies stopped processing open records requests last March. Even though officials continued working remotely, most open records offices didn't reopen until May. The closings let the clock on responding to records requests go out the window. One 30-day extension would lead to the next, and the next. "Another 30 days," became a seemingly automatic response and sadly, still is in many instances.

Let's remember, government agencies serve *all* the state's residents. In 2019, less than 10 percent of the appeals to the Office of Open Records were filed by media. The vast majority came from average citizens, your constituents. This information shutdown fed public suspicion and distrust in the early months of the pandemic. Newsrooms – and the public – were blocked from obtaining the facts on several major topics including:

- Cases in Pennsylvania nursing homes. While other states were naming facilities and their number of positive COVID cases, Pennsylvania waited many weeks to do so.
- Exemptions from the COVID closure order for select businesses. The administration put off media requests for information on this process for weeks. Even after the list of businesses with waivers was released, the state refused to detail criteria used in its decisions.
- Metrics behind reopening counties. Confusion over which standards were applied persisted for weeks.

In July, Chairman Grove's bill ensuring access to public records during declared emergencies became law, forcing the state to resume processing Right-to-Know requests. We welcomed this development. But all has not been smooth sailing in the pursuit of transparency since then.

State government is overusing the Disease Prevention and Control Act to continue denying access to COVID-related public records. While most denials using this outdated Act come from state agencies, it's also being used by some counties. Leaders in newsrooms across the state say it remains a major impediment to gathering information when Pennsylvania residents need it most.

Needed improvements to the Right-to-Know Law

The pandemic has brought the intense need for public transparency and government accountability to the forefront, and it is clear changes are needed to the state's Right-to-Know Law. The Right-to-Know Law has some three dozen exceptions. I'll single out four that Pennsylvania journalists have told me are especially problematic and out of step with the rest of the country.

1. **Disciplinary records for public officials.** Our websites are regrettably full of stories about police, borough managers and school administrators who are terminated for cause in one town only to be hired by another municipality or district before their background comes to light. There's even a nickname for these incidents – "pass the trash." These records should not be exempt, and when a public employee is fired or demoted for cause, we believe the law was intended to allow public access to records that illustrate the reason why.
2. **Police incident reports.** The Right-to-Know Law should be modified to provide access to criminal incident reports, not just arrest records. People have a right to know basic information about law enforcement responses in their community, not just when an arrest has been made. People need to know when crimes happen in their neighborhoods so they can take appropriate steps to protect themselves and to understand law enforcement's

response. Basic information about criminal incidents provides a basic measure of accountability that is not available under current law. Moreover, arrest and accident reports should be released in a timely and complete fashion. For example, the Bloomsburg Press Enterprise has received accident reports from the State Police delayed by more than a month and often missing the names of the drivers and passengers. Attempts to get more information are often unsuccessful, they say.

3. **Emails for state legislators.** Currently, only "legislative records" are public and those do not include emails.
4. **Police video and audio recordings.** Body-worn and dashboard cameras are being used with increasing frequency by police departments across the state. These valuable resources for evidence collection also serve, under best practices, to enhance officer accountability. That's not the case in Pennsylvania, despite the heightened scrutiny of law enforcement throughout the nation and a public demand for greater transparency. PA Act 22 of 2017 gave police wide latitude to deny the release of video and audio recordings made by this equipment on the grounds the materials are part of investigations. As a result, they are rarely seen and do not serve the accountability function they were intended to provide. Such recorded information should be returned to the umbrella of the Right-to-Know Law.

Best practices for government transparency

The following are other recommendations for enhancing government transparency and increasing access to public information:

- **Create a time limit for police/criminal records.** As soon as a case is considered adjudicated, basic investigatory records should be subject to the Right-to-Know Law.
- **Maintain a "most commonly requested" site** that provides proactive public access to those government documents free of charge.
- **Establish best practices for archiving phone logs.** The "Skype for Business" phone system, purchased in 2018, currently limits logs for state agencies using the system to the prior 30 days. It's unclear why those logs have such a short lifetime when technology that easily enables better access and more detailed records has been available for decades.
- **Require government agencies unsuccessfully appealing OOR decisions to pay their opponent's legal bills.** Right-to-Know court battles are becoming prohibitively expensive for the media and the public.

This last request has become critically important, with many RTKL violations going unchallenged as many newsrooms under increasingly severe financial pressure are daunted by the high cost of legal fees for these proceedings. In addition to the great expense, even the most clear-cut of cases can become egregiously drawn-out matters.

For example, PA Media Group is the plaintiff in a legal action seeking information on applications for production and dispensary licenses in Pennsylvania's medical marijuana industry. The case is now stretching into its fourth year. The Health Department has appealed consistent rulings in our favor all the way to the state Supreme Court. Requiring agencies to reimburse requester's legal fees when a court grants access encourages compliance with the law. It also provides an incentive for attorneys to accept RTKL cases, which would help even the playing field for requesters who face teams of taxpayer-funded attorneys working to deny access.

Thank you for your time and consideration this afternoon. In preparing for this hearing, I spoke with journalists in the state's top media organizations including the PA News Leaders Association, PA Freedom of Information Coalition and Reporters Committee for Freedom of the Press, as well as the PA NewsMedia Association. All were very glad your committee is examining these vitally important First Amendment issues.

In conclusion, rumors thrive in a vacuum, with misinformation about the pandemic circulating in the public sphere. Pennsylvania's news media plays *the* essential role in providing the state's citizens with accurate and timely information that separates truth from dangerous fictions. We need improved transparency, a strong Open Records Office, and a strengthened Right-to-Know Law to help us do so. Our readers – your constituents – who are so intensely clamoring for this information will thank you.