

BUCKS COUNTY  
**Courier Times**  
**The Intelligencer**



**House State Government Committee**  
**The Honorable Seth M. Grove, Chair**  
**November 4, 2021**

**Written Testimony of Shane Fitzgerald**  
**Pennsylvania State Editor, USA Today Network**

Good morning Chairman Grove, Chairman Conklin, Subcommittee Chair Schemel and Members of the House State Government Committee. I'm honored to testify in front of this Committee again. My name is Shane Fitzgerald and I serve as the Pennsylvania State Editor for the USA Today Network. Our company represents 260 daily and more than 400 weekly newspapers across the country. The 14 publications I oversee in Pennsylvania include the:

- Bucks County Courier Times • The Intelligencer • Beaver County Times
- Chambersburg Public Opinion • Ellwood City Ledger • Erie Times-News
- Greencastle Echo Pilot • Hanover Evening Sun • Lebanon Daily News
- Pocono Record • Somerset Daily American • Tri-County Independent
- Waynesboro Record Herald • York Daily Record

I have been an executive editor in Pennsylvania in Beaver and Bucks counties since 2013 and have worked and consulted in numerous other states including Texas, New Jersey and Colorado. The USA Today Network is owned by Gannett, which is the nation's largest newspaper media chain, with newspapers in 46 states. We are also proud members of the Pennsylvania NewsMedia Association, which represents our interests at the Capitol.

In all of the states where I have worked, Pennsylvania is, by far, one of the most difficult places to obtain information. Citizens want to know about issues that matter to them in their communities. Public attendance and participation at local government meetings are cornerstones of democracy.

Our papers must routinely use various legal processes to overcome access denials. For example, one of our papers, the York Daily Record, has been heavily involved in the quest for access after the York County Clerk of Courts began denying free access to judicial records. Citizens have a right to look at criminal case files without paying for them and without significant delays in access. Our reporters are also regularly involved in Right-to-Know law appeals at the Office of Open Records, with many cases where agencies denied access only to have the OOR agree with our journalists finding records are public and must be provided.

In addition to the legal process, one of the most common barriers that my staff journalists face is delays, often unnecessary administrative procedures that waste our time and agency resources. My colleague from the Altoona Mirror, Kay Stephens, noted that the Right-to-Know Law should include explicit language that governing bodies are free to provide public documents without requiring a formal, written Right-to-Know request. The state Office of Open Records has long taken this position and the OOR includes this language in its educational training sessions. While some local agencies are accommodating, others get very nervous about giving out any kind of documents. Due to this hesitation, they will require a Right-to-Know request to be submitted and then take five business days to respond. That's frustrating and unnecessary when you're asking for a document that should easily be recognized as a public record -- or just need some information that can easily be found on a public document. Requiring a formal, written RTKL request for clearly public records wastes time and just as importantly, it wastes public resources when agency officials take time to deal with the administrative process created by formal RTKL requests. The RTKL process is there for times when there is some doubt as to whether a record is public; it is not necessary or appropriate when records are clearly public and should be readily accessible.

In addition to administrative barriers that delay access, many agencies misapply or overuse the time extension provision in the RTKL. Some agencies routinely take the maximum amount of time to respond regardless of the need or appropriateness of such an extension. For example, it is not unusual for journalists to receive extension letters for records that are undeniably public and easily accessible such as meeting minutes and salary records. The RTKL was intended to facilitate access quickly except in rare circumstances. Understandably, this issue has been made worse by the pandemic, but it has been an ongoing problem for years before the COVID-19 disaster exacerbated the issue. The RTKL requires agencies to respond to requests "as promptly as possible under the circumstances" but not longer than five business days. The law allows an agency to take an additional 30 calendar days in limited circumstances. For example, one of PNA's largest members has three school districts that always use the extension, no matter the request; and there are examples from all over the state of this misuse of the extension. The plain language of the RTKL makes this clear, but the law lacks a mechanism for oversight of the extension provision, the ability to challenge its application or a penalty for its misuse. We respectfully request this committee considers amendments that limit an agency's ability to take unwarranted extensions of time.

The Bucks County Courier Times has experienced numerous access issues, and the most recent denials have been a result of the Disease Prevention and Control Law, which has become an impenetrable barrier that blocks public access and accountability related to infectious diseases and

other community health issues. We also heartily support House Bill 1893, sponsored by Bucks County Rep. Craig Staats, which replaces Section 15 of the DPCL with a provision that disease information under the act is *subject to the Right-to-Know Law*. We are grateful to this Committee and to the House as a whole for their work on that bill.

Moving onto the Sunshine Act, the purpose is to protect the public's right to attend and participate in all meetings of government agencies where agency business is discussed or acted upon. The general rule is that all official action, and deliberations by a quorum of an agency, must take place at a meeting open to the public. There are specific, enumerated exceptions that allow certain deliberations and meetings to take place outside a public meeting, but there is no exception that allows official action to occur outside a public meeting.

Although the text of the Sunshine Act is straightforward, public officials throughout the state continue to conduct business behind closed doors. Some examples we've seen include:

- Awarding contracts to family members' businesses without a bidding process.
- Taking votes over the phone and email without public input or oversight.<sup>1</sup>
- Shutting the public out of meetings that must be conducted publicly by misusing executive sessions.

The Beaver County Times, one of the papers in my network, has seen numerous alleged open meetings violations. A recent letter to the editor said, "The lack of borough transparency is egregious and unlawful."

For example, at a virtual meeting held under then-applicable Act 15 of 2020, a citizen attempted to raise an objection to seek clarification before the council voted on an issue related to pipeline landslides but he could not. Due to very poor audio accessibility, many of the attendees participating online asked for clarification on exactly what was being discussed and what was being proposed before any actions were taken. Residents asked for the opportunity to hear remarks and the motion being considered before a vote was taken. Instead, the repeated requests for clarity were met with calls for the online meeting microphones to be muted.

Another one of my colleagues from the Sharon Herald has reported on numerous Sunshine Act concerns. West Middlesex Borough council members took official action in virtual secrecy by voting by phone and email. The council's actions appear to be a glaring violation of state open-meetings laws. The apparent violations, uncovered in a June report by the State Ethics Commission, showed council members voting on street projects through individual phone calls in 2018. West Middlesex Borough Council faces another allegation of an open meetings-law violation — this time in 2020 for apparently failing to hire a contractor in a public meeting.

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<sup>1</sup> Just two weeks ago, the Mercer County DA warned the West Middlesex Borough Council to comply with open meetings laws or risk criminal charges. This came after it was reported by the Sharon Herald that council members officially voted by phone and email in 2018. See Klaric, Melissa, "Acker Warns Councils to Follow Open Meetings Laws," sharonherald.com, The Sharon Herald, [https://www.sharonherald.com/news/acker-warns-councils-to-follow-open-meeting-laws/article\\_dd6ff1fc-2f83-11ec-bd44-d32d5d9a260b.html](https://www.sharonherald.com/news/acker-warns-councils-to-follow-open-meeting-laws/article_dd6ff1fc-2f83-11ec-bd44-d32d5d9a260b.html), Accessed November 2, 2021.

In a recent editorial, a colleague noted, “Local government in Western Pennsylvania is often sloppy and secretive. It frequently violates the spirit, if not the letter, of state Right-to-Know and open-meetings laws. This newspaper, like any newspaper, encounters almost daily barriers, big and small, erected by...public officials. They help subvert the intent of the law — and, thus, democracy itself — by phoning in votes, concealing a labor contract, withholding information on an executive session, or concealing how government operates in a zillion other ways.”<sup>2</sup>

The Pittsburgh Tribune-Review reports that at Monessen council’s Jan. 6, 2020, meeting, the mayor utilized a majority of council votes to fire the city solicitor and city administrator, changed the date and time of council meetings without asking other council members, appointed committee members as a single motion, and adjourned the meeting without allowing public comment, along with five other administrative moves that came with no public explanation other than saying the mayor was “moving in a new direction.”

The Waynesboro Record Herald reported that some parents believe the Chambersburg Area school board has been violating Pennsylvania law by not providing a way for the public to actively participate during remote board meetings.

In late 2020, the Erie Times-News reports that in only its second meeting, the Erie County’s new Community College Board of Trustees voted by secret ballot to name a board chairman, running afoul of the Sunshine Act’s requirement that all votes be publicly cast.

We hear about these issues consistently and believe the law should be amended to encourage compliance and ease enforcement.

We also believe the Sunshine Act must be amended to require agencies to provide meaningful information about the use of executive sessions. Anytime an agency calls an executive session, the law requires the agency to publicly announce the reason that justifies the public’s exclusion. All too often, agencies simply say “litigation” or “personnel” or another generic justification that makes it difficult to determine whether the executive session was appropriate. The Commonwealth Court has held that generic justifications are not legally sufficient, and agencies must provide information that enables the public to gauge appropriateness because the announcement is the public’s only opportunity to understand why they were excluded. We believe this concept should be enshrined in the statute to make clear that agencies have an affirmative legal duty to justify excluding the public with real, meaningful information, not just a generic regurgitation of the statute.

Another issue we’ve encountered is virtual meetings, which we do not support as a replacement for in-person public meetings. We support virtual meetings as a complement to traditional, in-person meetings, but only when they are transparent, accessible and allow the public to fully participate. When held correctly in tandem with in-person meetings, virtual meetings allow more

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<sup>2</sup> Gerritt, Jefferey, “Mercer County DA Makes Strong Statement on Open Government,” sharonherald.com, The Sharon Herald, 21 October 2021, [https://www.sharonherald.com/opinion/editorial-mercercounty-da-makes-strong-statement-on-open-government/article\\_6b25811e-32c3-11ec-a95f-4798603f8765.html](https://www.sharonherald.com/opinion/editorial-mercercounty-da-makes-strong-statement-on-open-government/article_6b25811e-32c3-11ec-a95f-4798603f8765.html), Accessed November 2, 2021.

citizens to access and participate in local government proceedings; that's good public policy. Journalists also appreciate the flexibility of virtual meetings because many cover multiple meetings across large coverage areas. Making meetings more accessible to the press leads to more coverage and a better-informed citizenry. However, technical difficulties, and issues related to public participation, jeopardize public access and engagement in virtual meetings; in some cases, they have contributed to state Sunshine Act violations. Also, lack of internet access makes virtual participation a nonstarter in some communities and for many Pennsylvanians. With an expectation that technical challenges be addressed, resolved and managed, government and its citizens benefit most from a hybrid public-meeting option: a required *in-person* meeting that requires public officials to be *physically present* to constitute a quorum at locations that remain *physically accessible* to the public, along with a livestream and/or conference call option for those who cannot or choose not to attend in person. This hybrid approach will maximize transparency and foster public participation.

At the end of this testimony is a very small list of examples from across the state of Sunshine Act compliance issues that illustrate why the Act must be updated. Our newspapers cover these stories and serve as a watchdog to ensure that government officials follow the law and are properly serving their constituents.

I encourage you to support legislative efforts to improve the Right-to-Know Law and Sunshine Act, and I am happy to answer any questions you may have.

Bucks County Courier Times

[Pennsbury cut public comments in BOE meeting videos. When a resident blasted the move, it went viral.](#)

Times Leader (Wilkes-Barre)

[In offbeat proceeding, WVW Sunshine Act violation claim gets hearing date](#)

PublicSource (Pittsburgh)

[Pandemic participation: Online government both enables and stifles access to public meetings in Allegheny County](#)

The Times-Tribune (Scranton)

[Judge rules Scranton School District violated Sunshine Act with furlough vote](#)

The Public Opinion (Chambersburg)



[Chambersburg parents seek chance to speak live at school board meetings](#)

The Morning Call (Allentown)

[Locked out in East Penn, Zoombombed in Bethlehem Township: Virtual meetings raise Sunshine Act issues](#)

LNP (Lancaster)

[Columbia residents concerned borough officials violating Pennsylvania's open meeting law](#)

Tribune-Review (Pittsburgh)

[Editorial: Highlands needs to let the Sunshine Act in](#)

Observer-Reporter (Washington)

[EDITORIAL: Claim about Charleroi council is concerning](#)

Herald-Standard (Uniontown)

[Group texts can violate the Sunshine Act](#)

Herald-Standard (Uniontown)

[Charleroi councilman alleges members violated Sunshine Act](#)

The Times-Tribune (Scranton)

[Scranton School Board may have Violated State Law with Layoff Vote](#)

Meadville Tribune

[Judge Recuses Self from Penncrest Sunshine Act Violation Hearing](#)

Tribune-Review (Pittsburgh)

[Pittsburgh City Council Secretly Hires New City Clerk](#)

Bucks County Courier Times

[Ain't no Sunshine in many Bucks/Montgomery towns' executive sessions](#)

LNP / LancasterOnline

[Manheim Township school board admits to violating Sunshine Act](#)

The Bradford Era

[Tanner tenders resignation from Keating Twp. Supervisors](#)

Citizens' Voice (Wilkes-Barre)

[County council approves union contract amidst transparency complaints](#)

Williamsport Sun-Gazette

[Municipal Water and Sanitary Authorities fail to advertise as deliberations take place](#)

Clearfield Progress

[NO TRANSPARENCY: Curwensville Boro Council violates Sunshine Act by conducting business behind closed doors](#)

Beaver County Times

[Possible Sunshine Law violations by county commissioners exposed in firing of solicitor](#)

York Dispatch

[West York school board violated Sunshine Act over appointment, member says](#)

LNP / LancasterOnline

[Columbia Borough Council again accused of violating Pennsylvania's Sunshine Act](#)

Herald-Standard (Uniontown)

[Group texts can violate the Sunshine Act](#)

Erie Times-News

[Did private meeting on Erie community college violate Sunshine law?](#)

York Dispatch

[Secret York County election meeting faces legal questions](#)

Delaware County Daily Times

[Chester Water Authority sues to stop city-Aqua deal](#)

The Philadelphia Tribune

[Alliance for Philadelphia Public Schools accuses school district of violating state open meetings law](#)

Observer-Reporter (Washington)

[Cecil supervisor takes colleagues to court over law firm firing](#)

Beaver County Times

[Possible Sunshine Law violations by county commissioners exposed in firing of solicitor](#)

Erie Times-News

[Erie County Tech School chief got secret suspension](#)

Pennlive / The Patriot-News (Harrisburg)

[Harrisburg schools leader makes it clear she has no time for charter schools](#)

Clearfield Progress

[Sunshine Law violations continue in Curwensville](#)

The Almanac (Washington)

[Bethel Park School Board passes unexpected tax cut](#)

Erie Times-News

[Repeat concerns fill case against Erie Rise's charter](#)

The Morning Call (Allentown)

[Charter school's budget vote, unadvertised meetings raise Sunshine Act questions](#)



Erie Times-News

[Erie Rise, school district clash over charter's future](#)

The Daily Item (Sunbury)

[Best suit: Northumberland County majority commissioners violated open records law](#)

York Dispatch

[YCIDA looks to have violated state Sunshine Act, again](#)

Associated Press

[House votes to make agencies post agendas before meetings](#)

York Dispatch

[Pa. schools, municipal boards don't have to tell you what they're talking about — and some don't](#)

Herald-Standard (Uniontown)

[Third suit filed against Shorraw, Monessen over alleged Sunshine Act violations](#)

Citizens' Voice (Wilkes-Barre)

[Local rail authority sued for Sunshine Law violation](#)

LNP / LancasterOnline

[Council made Columbia Borough manager changes last week in unannounced executive session](#)

New Castle News

[Citizen again requests meeting minutes](#)

Citizens' Voice (Wilkes-Barre)

[Some municipalities fail to advertise meetings](#)

Observer-Reporter (Washington)

[Attorney asks for quick hearing in Sunshine Act suit filed against Monessen](#)

The Indiana Gazette

[Group files suit over forestry plan](#)

I am happy to answer any questions you may have.