



**TESTIMONY ON
LOCAL GOVERNMENT USE OF COMMUNICATION APPLICATIONS UNDER THE RIGHT-TO-
KNOW AND OPEN MEETING LAWS**

Presented to the Senate Intergovernmental Operations Committee

By
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Thank you Chairman Coleman, Chairwoman Tartaglione and members of the Senate Intergovernmental Operations Committee for the opportunity to testify before you today. I am Frank Mazza, Director of Government Relations for the County Commissioners Association of Pennsylvania (CCAP). CCAP is a non-profit, non-partisan association representing the commonwealth's 67 counties.

We appreciate the opportunity to offer our remarks on the use of messaging apps with autodeletion features by public officials and employees. Counties strive to provide accessible local government and are a key partner with state government in serving our residents. We appreciate the attention of the General Assembly on this issue, particularly since counties have had updates to public transparency laws, including, the Right to Know Law ("RTKL") and the Open Meetings Law ("Sunshine Act") on their priorities list for several legislative sessions.

Counties believe that government has responsibility for maintaining records of its actions and records of the broad range of public transactions. This responsibility includes retaining records as appropriate for the use of future generations, making them accessible for individual use, and making them available as a means of promoting governmental accountability and transparency. We also believe there is a balance that must be maintained among access, privacy and security concerns.

At the association level, CCAP prioritizes the education of county leaders, and their staff, to ensure the proper execution of their duties and responsibilities under the law. To that end, CCAP provides robust training and informational sessions for newly elected commissioners in the form of conference training sessions (most recently in November 2023 for newly elected commissioners and councilmembers), and triannual conference breakout sessions with county solicitors and other experts on topics such as the RTKL and Sunshine Act. For county administrative staff, CCAP hosts an annual County Administrators Conference, which focuses on educational content and networking opportunities for staff to better understand their role in supporting the overall function of the county. Other county employees receive training from our affiliate organizations or other state and national level professional organizations. These trainings focus on the importance of understanding their responsibilities and duties under the law and strongly urges commissioners and their home rule counterparts to work closely with their solicitors to ensure close adherence to the RTKL, Sunshine Act, and record retention laws.

During the 2007-2008 legislative session, the General Assembly completed significant work to update the Right-to-Know Law. Act 3 of 2008 made changes to definitions, requests for access, electronic access, retention, response standards and redaction. Most importantly, it changed the presumption on records and burden of proof on their disclosure – rather than a limited number of records being open and the burden of proof being on the requester, all records became open unless covered under an exception and the burden of proof falls to the government agency to show that a record meets an exception.

Contrary to what many may suppose, counties supported the rewrite and invested a considerable amount of time working with all stakeholders in crafting what became Act 3 to

update the law to provide guidance for the scope and nature of open records in an age of new media and technologies. Similarly, our association was deeply engaged in the Sunshine Act changes that became Act 65 of 2021.

Counties recognize the evolution of technology and the way people communicate, receive news, and interact with others, including government entities. In general, it is our view that our current laws have provided the guidance counties need, while striking an appropriate balance between the public's need for access and the privacy rights of the individuals we serve. These laws require local governments and their elected officials and staff to recognize the important role education plays in ensuring transparent and good government practices by public officials.

As we consider from the county perspective what recommendations for changes we would make to these essential government transparency laws, counties would welcome stronger partnerships between local government entities, the Office of Open Records, and State Ethics Commission to better educate public officials and employees on their obligations under transparency laws in the digital era. As counties have highlighted over the last several years, there are necessary updates to ensure residents still have easy and open access to appropriate government records, including electronic advertisement provisions and other clean-up items related to the Sunshine Act. Counties have also sought clarifications surrounding the Right-to-Know Law and elections, noting the need for transparency while protecting the integrity of elections in the commonwealth. In terms of legislative changes this committee should consider related to autodeletion applications, it is not clear to us what changes may be needed as the law already covers these types of communications if they are "records" of agency business.

County governments understand the importance of balancing security, efficiency, and transparency and any changes to our current legal framework require careful consideration of the landscape local governments are operating within. We are committed to working collaboratively with state lawmakers, local government partners, and other stakeholders to review reasonable, practical solutions to address any public transparency law concerns, including those pertaining to the use of self-deleting communications applications, should this committee wish to pursue statutory updates.

Thank you for the opportunity to present this testimony. I would be happy to answer any questions you may have.