



**TESTIMONY BEFORE PENNSYLVANIA SENATE**  
**INTERGOVERNMENTAL OPERATIONS COMMITTEE**

Good morning, Chairman Coleman, Chairwoman Tartaglione, Vice Chairman Dush and members of the Senate Intergovernmental Operations Committee. Thank you for the opportunity to appear and offer testimony about the media's position on public officials' use of ephemeral messaging apps to conduct public business. My name is Melissa Melewsky, and I am media law counsel for the Pennsylvania NewsMedia Association. PNA is the statewide trade association for newspapers and digital news organizations. PNA was founded 100 years ago and has, for many decades, advocated for legislation that improves government transparency in Pennsylvania. We appreciate the opportunity to share our thoughts on some access issues facing our members and Pennsylvanians more broadly.

As media law counsel at PNA, one of my responsibilities is to answer questions on the PNA Legal Hotline. In that role, I talk to journalists every day about their difficulties in obtaining access to public records and public meetings across the state. Each year, I answer approximately 2,000 questions from journalists, over half of which deal with government transparency issues.

Today, my testimony will focus primarily on journalists' experiences with public officials' use of ephemeral messaging apps and how that use impacts public access rights under the Sunshine Act and Right-to-Know Law, Pennsylvania's open meetings and public records laws.

As you know, Pennsylvania's Sunshine Act requires public officials to deliberate and make decisions at public meetings. The law guarantees the public's right to witness and participate in government decision-making and the formation of public policy at all stages. Journalists routinely cover public meetings to keep their communities informed; they have reported public officials using various types of communications to avoid the transparency requirements of the Sunshine Act. For example, journalists have reported school board members using the Signal app during public meetings to discuss agenda items privately, both during public meetings and at other times, with no record accessible after the fact because the app automatically deletes messages. This kind of communication robs the public of its ability - and statutory right - to understand how public officials exercise government authority and why.

Using ephemeral message apps to discuss public business can also inhibit the public's ability to enforce the law. The Sunshine Act is silent as to burden of proof in enforcement actions, but the

courts have determined that the public bears the burden. This is opposite of the burden enshrined in the Right-to-Know Law, and it often creates a significant barrier to enforcement. One of the few ways to meet the burden of proof in a Sunshine Act civil lawsuit is through discovery, which can reveal records that illustrate compliance with or violation of the law. When an alleged violation occurs via ephemeral messaging app, discovery is rendered ineffective because there are no records to illustrate public officials' actions. This situation is currently playing out in a Sunshine Act lawsuit in Bucks County, where school board members are alleged to have used the Signal app to discuss school business, with the app automatically deleting the communications.

You can learn more about the Bucks County case here:

<https://www.phillyburbs.com/story/news/education/2025/03/17/central-bucks-board-destroyed-evidence-in-sunshine-act-case-lawsuit-pa-education/82379424007/>

<https://www.yahoo.com/news/central-bucks-board-destroyed-evidence-085612869.html>

Ephemeral messaging apps can also cause issues under the Right-to-Know Law, Pennsylvania's public records law. The Right-to-Know Law presumes records in possession of government agencies are public, and the burden to prove otherwise falls on government agencies. When journalists become aware of public officials using communication tools like Signal or WhatsApp, they seek copies under the Right-to-Know Law. However, due to the nature of technology, there is often no record to be provided. Apps like Signal, WhatsApp and others allow users to automatically delete messages after a certain period, typically mere hours. Once a message is deleted, it is not recoverable, and if no record exists, the Right-to-Know Law cannot bring it back into existence. In these cases, discussions amongst public officials, about public business, are lost to both the government and the public it serves, removing any possibility of oversight and accountability.

This issue was recently highlighted in western Pennsylvania when a journalist with The Tribune-Review (Greensburg) learned that Pittsburgh officials were using the Signal app to discuss city business. The journalist filed two Right-to-Know Law requests seeking copies of any messages between certain city officials that involve public business using Signal or other ephemeral messaging apps. The city denied access in both cases, claiming the messages do not exist, and the Office of Open Records ultimately affirmed the denials. It is important to understand that the city did not say public officials did not use or are prohibited from using ephemeral messaging apps to discuss city business; the city only claimed the messages did not exist, which is to be expected when technology automatically deletes records. You can learn more about the cases

here: <https://www.openrecords.pa.gov/Appeals/DocketSheet.cfm?docket=20242480>

<https://www.openrecords.pa.gov/Appeals/DocketSheet.cfm?docket=20242132>

The root of the problem could be that Pennsylvania law does not specifically address public officials' use of ephemeral messaging apps, and record retention policies that apply to state and local governments are also silent on the issue.

From a Sunshine Act perspective, the law prohibits private deliberations of any kind, including email, teleconference, text and other messaging technology, but the law doesn't expressly say that because it was written long before current technology existed. The lack of express prohibitions on the use of technology, coupled with technology's ease of use, can cause confusion and misapplication. One way to address these issues is to tighten statutory language to expressly prohibit private deliberation using advanced communication technology. By doing so, we believe the law will reaffirm its foundational prohibition on private deliberations of any kind while providing clear guidance for agencies and the public. We believe these changes will encourage compliance and decrease the need for litigation.

However, amendments to the Sunshine Act would not impact public officials' use of the technology more broadly, outside the context of the Sunshine Act. If applied to the examples above, Sunshine Act amendments would prohibit school board members from using ephemeral messaging apps to hold quorum discussions of agency business, but they would not impact the case involving Pittsburgh city officials because the Sunshine Act does not apply in that context. To address the broader problem, a generally applicable law would be necessary to prohibit the use of ephemeral messaging apps to discuss public business, or if such technology is permitted, to expressly require that messages be retained consistent with applicable record retention laws.

The current lack of legal clarity could cause confusion among public officials, or worse, encourage them to use technology in ways that do not serve the public interest. Without clear guidance from the General Assembly, and as technology continues to advance, this problem will likely persist in eroding the public's rights under the Sunshine Act and the Right-to-Know Law to transparent, accountable government.

If this committee believes broad-based legislation is the proper means to address the issue, it could be helpful to look to our sister states for guidance. Below are examples of laws, policies, and settlements from other states that address the issue. We have also included information and links to news coverage about the issue from other states to help illustrate the pervasiveness of the problem.

Thank you again for your time and consideration. We look forward to working with this committee to improve the Right-to-Know Law, Sunshine Act, and government transparency for all Pennsylvanians.

### **News from around the nation**

#### **Georgia**

#### **Atlanta police use Signal to discuss 'Cop City' amid outcry over transparency**

The Guardian <https://www.theguardian.com/us-news/2023/dec/04/cop-city-atlanta-police-signal->

[app](#)

High-ranking members of police department using encrypted phone app to communicate about project amid public concern

## **Kentucky**

### **Top LMPD officers used app to automatically delete their texts, a potential crime**

Courier-Journal (Louisville) <https://www.courier-journal.com/story/news/investigations/2024/10/10/louisville-police-potential-open-records-violation-with-signal-app/75554683007/>

Louisville Metro Police's top officers, including its former chief, used an encrypted messaging application configured to automatically delete messages, effectively shielding their communications from public inspection and potentially committing a criminal offense in the process, The Courier Journal has found.

## **Michigan**

### **Lawmakers fired up over encryption app used by MSP that can evade Michigan FOIA**

Detroit Free Press <https://www.freep.com/story/news/local/michigan/2021/02/02/michigan-foia-law-encryption-app-signal/4315494001/>

Lawmakers from both parties are calling for changes to state law and/or policy after the Free Press revealed that top Michigan State Police officials have downloaded an app onto their state-issued phones that can put their text messages out of reach of the Michigan Freedom of Information Act and discovery requests in civil lawsuits.

## **Nevada**

### **'It's against our policy': Metro Sheriff speaks on officers' use of disappearing messages app**

KTNV (Las Vegas) <https://www.ktnv.com/news/crime/its-against-our-policy-metro-sheriff-speaks-on-officers-use-of-disappearing-messages-app>

Channel 13's Jaewon Jung looked into LVMPD officers using a secret messaging app called Signal. Grand jury evidence from includes several screenshots from the Signal group chat, which reveal police officers were communicating about arrest tactics. The evidence came to light after a police officer was indicted in October for charges of oppression, subornation of perjury, and battery on a protected person.

## **Utah**

### **USU leaders use messaging app to bypass public records laws, fired employee alleges in lawsuit**

The Salt Lake Tribune <https://www.sltrib.com/news/2025/01/06/utah-state-admin-use-signal-bypass/>

The allegation came to light in a complaint filed by the university's former deputy athletic director.

## **Other state laws, policies and litigation**

### **Michigan**

#### **Regulation of Ephemeral Messaging Applications**

##### **H.B. 4778, 101st Leg., Reg. Sess. (Mich. 2021)**

- Michigan enacted House Bill 4778, which explicitly prohibits all state departments and agencies from using any app, software, or technology that prevents compliance with public record retention laws.
- This is the only state law that directly bans the use of ephemeral messaging apps like Signal, WhatsApp or Confide for official business.

### **District of Columbia**

#### **2025 Legislative Resolution No. 1 - Council Period Twenty-Six Art. VIII, §812**

- Requires that council employees, including the chairman and councilmembers, use only government-provided email accounts, cell phones, or tablets for transacting public business.
- If nongovernment accounts or devices are used, employees must ensure that all messages, including those designed to disappear, are incorporated into official records in a text-searchable format.

#### **Bill 24-0692– 2022**

- Clarifies that public records include emails and electronically transmitted communications, making ephemeral messages subject to record retention laws.
- Prohibits enabling settings on government devices that allow for the automatic deletion of records.

### **Colorado**

#### **Epps and Marshall v. Colorado House of Representatives, Denver District Court (2023)**

- In this case, the state Reps. Elisabeth Epps and Bob Marshall sued the Colorado House, alleging widespread violations of open meetings laws.
- The lawsuit claimed lawmakers held secret meetings and used encrypted messaging apps like Signal to discuss legislative business without regard to public records requirements.
- A settlement was reached in the form of a [consent decree](#), requiring public notice for meetings, preservation of meeting minutes, and a ban on using Signal's auto-delete function.
- The decree will be in force until there is an amendment to the open meetings and public records laws.

## **Kansas**

### **[Executive Order 18-06 - 2018](#)**

- Requires all governor's office employees to conduct official business only via state email accounts.
- Implicitly bans ephemeral messaging apps for official communications within the governor's office.

## **Washington**

### **[Wilkinson v. Dep't of Children, Youth & Families, No. 24-2-03967-34 \(Wash. Super. Ct. filed Jan. 2, 2025\)](#)**

- The Washington Department of Children, Youth & Families (DCYF) reached a \$225,000 settlement over allegations of unlawfully destroying public records under the state's Public Records Act.
- The lawsuit, filed by Hall & Gilliland PLLC, accused DCYF of bad faith and recklessness in failing to retain Microsoft Teams messages, which were automatically deleted after seven (7) days under a statewide policy implemented by Washington Technology Solutions (WaTech) in 2021.
- Following the settlement, Gov. Bob Ferguson suspended the policy and ordered a six-month review ([see Seattle Times coverage of the settlement](#)).