

My name is Tim Daly, a resident of Bucks County. Until COVID-19 shut down our schools in March 2020, I had not been actively involved in government participation. I initiated my first RTKs in August of 2020 and have since become highly skilled at obtaining records. Over the past five years, I have submitted approximately 150 to 200 RTKs. Many of these have been unreasonably denied by Solicitors at government agencies in violation of Pennsylvania law. These denials have led to numerous appeals at the Office of Open Records, often resulting in withdrawals by Solicitors once they realize that I understood my rights to access documents.

Of those RTKs, 50 specific appeals were submitted after denials and 30 appeals hearings occurred with 20 being consolidated, withdrawn or dismissed. Most of the withdrawals or dismissals were due to Solicitors fulfilling RTKs after I appealed. Of the 30 appeals that proceeded, I achieved favorable rulings 11 times. At a recent symposium last week conducted by Liz Wagenseller, OOR staff noted while engaging in comments with attendees that there is no formal training provided to Open Records Officers at the Agency. This lack of formal training in my opinion has led to improper denials by the Agency which leads to unnecessary appeals, such as the 20 that I've just noted. But perhaps my biggest complaint of the process is the blind acceptance of Affidavits that trigger technicalities and don't truly resolve misconduct by Agencies improperly denying records or violating PA Sunshine Law requirements.

Since I began my RTK efforts, I've noticed significant changes in the information I uncover through my requests. Email communication chains often go silent just before significant information is shared. These dead email chains raised my suspicions, so about 18 months ago, I began requesting SMS texts and chat messaging app records regularly. In these situations, I have filed subsequent RTKs that found Agencies and Solicitors often do the bare minimum to obtain records, meeting minimal standards of compliance that are not within the spirit of the law. Recently, I have uncovered multiple instances at various government agencies where public officials are creating records using personal email accounts, SMS texts, and chat messaging apps that can delete records within 24 hours that prevent requesters from even submitting RTKs for those records.

In some instances, when appeals are made, I have encountered bold attestations aimed to avoid turning over records and triggering a technicality. A range of examples include:

- Two public officials in different levels of government engaging in conversations on personal devices related to school district business and then declaring these communications were exempt because one individual stated that the outreach was made on a personal constituent basis despite the nature of the conversation appearing to be that of official business.
- A school district denying the existence of Lesson Plans despite school policy requiring their creation. The OOR denied the appeal after the school district confirmed they reached out to 20 principals and vice principals for records, but not one person responded to the RTK fulfillment request sent via email.

- A school district and its Board Member attested that all records on personal devices and personal emails were provided and the OOR denied my appeal. It was subsequently determined in a future RTK that another personal email existed for the Board Member and the school district's litigation attorney was in possession of multiple emails from that Board Member through Discovery process in an active lawsuit.
- A school board member was seen on video during a meeting texting multiple times. An RTK seeking the texts made with another board member were denied. The district submitted an attestation about their RTK compliance process and OOR denied the records despite video and photographic evidence submitted that confirmed the texting exchanges.

I hope that the examples I have provided disturb the members of this committee as to how public officials have moved to using personal devices and how the OOR has struggled to adapt to these recent behavioral changes inhibiting government transparency. It was already a challenge to obtain records maintained on Agency servers, the use of personal devices and applications to avoid and in some instances destroy records within 24 hours has created further complications.

Agencies and public officials clearly are seeing the ability to avoid, destroy or not comply with requests and increasing their efforts to avoid responsive records compliance. I've even obtained two bad faith rulings in my appeals to support this conclusion. I feel the reasons for this is a lack of consequences. Why comply with RTK or PA Sunshine Law when the law is not being, or able to be, enforced effectively. It is a \$100 fine to not comply with PA Sunshine Law. You get a slap on the wrist or a complete rejection of bad faith rulings by the PA Disciplinary Board. In short, the process feels rigged from the onset for the Requestor. There simply is a lack of consequences.

Over the past five years, I have spent nearly \$25,000 fighting government agencies that have denied access to records or violated PA Sunshine Law. These agencies include Pennsbury School District, Central Bucks School District, Council Rock School District, Bucks County Intermediate Unit, the Bucks County Commissioners, and Lower Makefield Township. I am fortunate to have the personal wealth to afford these legal fees, but the average citizen here in Pennsylvania is unable to bear these costs. Financial roadblocks that hinder holding government officials accountable should not exist.

I am here today to urge this Committee to initiate a comprehensive overhaul of PA Sunshine Law, RTKL and the Office of Open Records. The burden of proof is on the Agency, but too often it feels the other way around. Additionally, I want to recommend rethinking having District Attorneys to be part of legal enforcement process. I feel that The best model to ensure Due Process, would be to have a process similar to how the PA Bureau of Consumer Protection handles citizen complaints if District Attorney offices are hesitant or uninterested in enforcing these important laws.