

# Pennsylvania State Association of Boroughs



*Testimony on*

*Right-to-Know Law*

*State Government Committee  
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Good Morning Chairman Metcalfe, Chairman Cohen and members of the House State Government Committee. The Pennsylvania State Association of Boroughs (PSAB) is a nonprofit, nonpartisan local government association representing the interests of 958 boroughs and the more than 10,000 elected and appointed borough officials. For over 100 years, PSAB has helped to shape the laws that govern boroughs and municipal officials across the state. We look forward to the next century of service to our membership and working with the General Assembly on a host of important issues, among which is what brings us here today, Act 3 of 2008 Pennsylvania's Right-to-Know law.

We can all agree that the public has a right to information on how their government operates and spends public – or more so taxpayer dollars. After all, information is the backbone of our democracy. If people do not know what is going on in their communities, they are ill-prepared and less likely to participate in their government. To foster this participation and prompt accountability Pennsylvania expanded its Right-to-Know law by passing Act 3 of 2008; PSAB agreed, it was the right thing to do to maintain transparency in government.

However, there have been several unintended consequences from the Act resulting in additional burdens being placed on our local governments. PSAB members agree the time to enact needed changes is now. This spring, our members have voiced that concern formally through a resolution adopted during our 2013 Annual Conference.<sup>1</sup>

This year alone, boroughs have encountered requests which are voluminous in nature and take extensive staff time for researching information, retrieving records and copying documents. In some cases, the administrative costs associated with RTK requests have been staggering. One case regarding true costs for information requested resulted in a \$546 total cost to the borough administration while the requestor only paid \$28 for the documentation. Another extreme example is a total processing cost of \$103 which was acquired by the requestor for \$1! It is unfortunate that after excessive time and attention is spent on processing RTK requests, several boroughs report that requestors decide to not follow through, due to cost or other reasons.

In the scope of things, many of our borough managers and secretaries serve part-time, and some volunteer that time. Moreover, to keep taxpayer costs down, it is not uncommon for borough offices only to be open on select days and hours of the week. Sadly, frivolously submitted RTK requests often take away from staff core functions like answering resident inquiries, preparing spending plans, overseeing day-to-day operations of departments, and facilitating economic development projects, among other responsibilities.

With that said, PSAB would offer brief comments on current legislation addressing the issue. Overall the association is watching 4 bills within the legislature which we believe are worthy of further action. It includes two bills from the PA House and two from the PA Senate.

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<sup>1</sup> **PSAB Resolution 2013-18;**

BE IT RESOLVED, that PSAB pursue legislation to review and amend the Right to Know Act of 2008 in order to seek relief for boroughs burdened by unreasonable and/or repeated Right-to-Know requests.

PSAB is supportive of **House Resolution 100**, sponsored by Rep. Kate Harper that calls for a review of the fiscal impact on state and local government agencies for the implementation of the Right-to-Know law. It is a critical start to understanding the costs associated with the law and what future laws could help ease the financial burden. PSAB also favors **House Bill 1087**, authored by Rep. William Adolph, which would permit local and state agencies to charge additional search and review fees when responding to public record requests made for a commercial purpose – hoping to make money off of information they glean. These fees would be capped at the quarter-hour rate of pay of the employee filling the request plus 20 percent. Both HR 100 and HB 1087 are commonsense measures that will address a financial burden, while protecting the public’s right to information.

In the Senate, PSAB prefers **Senate Bill 444**, sponsored by Sen. Dominic Pileggi which is a comprehensive amendment to Act 3 that among several other changes creates a commonsense fee structure for commercial requests, adds volunteer fire & emergency service provider records to the list of exceptions, other than financial records if the organization has a contract with the borough. Lastly, SB 444 keeps a borough’s bank & credit card numbers/ passwords private and allows boroughs to charge a pre-payment if record duplication costs are expected to exceed \$50, rather than the current \$100 threshold. PSAB also favors **Senate Bill 284**, sponsored by Sen. Edwin Erickson which focuses on RTK requests prompted by commercial purposes. In Senator Erickson’s cosponsor memo he writes “that many local municipalities are being inundated with requests for records by companies who seek to use the information to benefit their commercial business enterprises . . . These voluminous requests are creating a significant cost to municipal offices, which are often staffed by only one or two individuals and sometimes only on a part-time basis and operating on very tight budgets“. SB 284 enables boroughs to assess search and review fees for records requested for a commercial purpose. Lastly, the bill would require requestors to disclose on their written request whether the record will be used for a commercial purpose.

In closing, I would add that the access and sharing of public information is an essential core function of effective local government; however the process should not be at the cost of and detriment to the daily of operations of a community that provides public safety, infrastructure and other critical services.

On behalf of the membership of PSAB, I want to thank the Chairs of the committee for their time and I’d be happy to answer any questions the committee may have.

*\*\*\*As a courtesy for reference I have attached a limited list of comments offered by borough officials who have shared their perspectives on the impacts of the RTK law. These comments have been collected from PSAB’s Borough Discussion Group or BDG an online discussion service provided free to membership.*

## Right-to-Know Law comments offered from Borough Officials

- 1) It seems like many of the comments center around small boroughs **not having resources or time to complete the tasks** at hand. I wonder if somehow concessions on time limits can be made dependent on the number of employees in the borough. In our Boro, we have one full time and one part time employee. When a large request comes in, it can literally shut down an office like ours to get it compiled in time. Controlling requests from citizen is a trickier task than controlling business requests and gets into serious questions of citizen rights.
- 2) There needs to be some provision to allow us to stop someone who has a **rift with the municipality** and is trying to get back at them by filing constant requests for records. Constant requests for information just to cause a disruption in the municipality's business can shut-down small municipalities by making the municipality devote all its resources to satisfy requests. This has happened to our borough and several other small municipalities.
- 3) I have had one individual directly say to me that he knew I would **not be able to comply with his request** in the amount of time given (even with the 30 day extension), therefore making the Borough look like the "bad guy" unwilling to provide the information to him.
- 4) I believe that companies requiring the information for purely profitable purposes should be addressed. **Fence and pool companies** asking us to pull permitting records for their own purposes use borough employee time and therefore tax dollars to make a profit for themselves. Not to mention, it brings up privacy issues for residents. They may be on a do-not-call list, but end up getting unwanted sales calls because we had to hand out records that included their contact information.
- 5) I feel they should not allow **requests to be returned by fax**. We cannot charge for these requests ahead of time, because we don't know the actual cost. It is very difficult, if not impossible, to determine how much it cost to send a fax until a phone bill is received. Sending a large volume of papers by fax can be time-consuming. If the documents sent are double sided we have to make them one sided to fax. This allows requestors to not pay the per page fees. What incentive would people have to send the fee after they have already received the information?
- 6) I do not feel the Open Records Officer should have to have his/her signature notarized on a **"Non Existence of Record Form"**. This is a huge inconvenience in a small borough. Our signature on borough letterhead should be enough.
- 7) I have had several very extensive requests filed by persons who were upset with the borough council. It seems like if someone doesn't get his way, he just **files an unreasonable request**, which I see as a legal way to harass the records officer. Last fall, a person who requested records filed a complaint against me, saying that I was "putting him off". When I received the letter from the state Office of Open Records, I called to find out what I should do. I was told that I would have to prove I did not violate the law. Basically, I was assumed guilty unless I proved otherwise. The person who filed the complaint didn't have to prove anything. I had very good documentation (lots of e-mails and notes) to show that I went above and beyond the law to provide the requested records. I had only 7 business days to get my documentation to the OOR. I had to work overtime, get the attorney involved, put my personal life aside, and focus on my defense. After I submitted my documentation to the OOR, the records requester finally came into the office to view the records, then called the OOR and withdrew the complaint.  
This is my 22nd year as borough secretary, and these types of complaints have brought me closer than ever to walking away from this job. I feel that if something doesn't change with this law, many municipalities will lose good employees and will have a difficult time replacing them.