

**Statement on SB 444 (Amendments to the Right-to-Know Law)  
Pennsylvania State System of Higher Education (PASSHE)  
before the Senate State Government Committee**

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Chairman Smucker, Chairman Smith and members of the Senate State Government Committee: Good morning. My name is Kenn Marshall. I am the media relations manager for the Pennsylvania State System of Higher Education. For most of the last 15 years my responsibilities have included serving as the open records officer for PASSHE and the Office of the Chancellor.

I am joined by Mr. Steven DiGuseppe, assistant to the vice president for alumni & community relations and the agency open records officer at Millersville University of Pennsylvania. We welcome this opportunity to appear before you to discuss Senate Bill 444 and the proposed amendments to the Right to Know Law.

As an independent state agency, PASSHE and its member universities have been subject to the provisions of the Right to Know Law since its initial passage. We recognize the important role the law plays in ensuring open government, and are committed to complying in a timely manner with all of its provisions. As a former newspaper reporter, I have been on both sides of the fence; both seeking information from government agencies and responding to requests for that information.

In an effort to provide you with an overview of the impact of the law on the System office, I have attached to my testimony a summary of the 116 requests I was responsible for processing in calendar year 2012. (See attachment)

In general, the most common types of requests we receive, both in the Office of the Chancellor and at the university level, relate to employee salary information, bid proposals, expenditures and student information. At the campus level, the number of requests our universities receive each year ranges from as few as 10 to 15 to more than 100. The numbers can fluctuate significantly from year to year based on current events.

As you can see from the attachment, of the 116 requests received by the Office of the Chancellor in 2012, I provided responses to 100 of those requests within the initial five business days as established by the law, including 44 for which a response was provided on the same day the request was received. Sixteen requests required extensions beyond the five-day period because of the need for extensive legal review—most of those requests were from unsuccessful vendors seeking copies of bid proposals submitted by their competitors. Fourteen of the requests received last year by the Office of the Chancellor were denied. Only two of those denials were appealed to the Office of Open Records. The OOR upheld both denials.

In my experience, the most significant impact of the 2009 amendments to the Right-to-Know Law—at least in terms of the type and number of requests our office receives—resulted from the change in the law that broadened the definition of what is considered a public document to include all bid proposals received by a public entity. Previously, only approved contracts were subject to public disclosure.

This change has resulted not only in an increased number of requests, but also in a significant increase in the amount of staff time needed to process them. Based on the nature and scope of these requests, an extension in the time needed to respond is almost always necessary for adequate review. Please allow me to cite an example.

I currently am preparing a response to a request from an unsuccessful bidder for copies of all of the proposals that were submitted in PASSHE's recent procurement of a new contract with a healthcare provider. Seven proposals were submitted, with each containing several hundred pages of documents. Attorneys in our office are reviewing all of those documents for possible redaction of information pursuant to the statute.

Under our procedures, all of the companies that submitted bids have been contacted to allow them the opportunity to identify any information in their proposals that they would consider to be either a "trade secret" or "proprietary." Such information would need to be redacted from the final response, in accordance with the law. As is most often the case, the notification that was sent out has prompted additional RTK requests from several of the other unsuccessful bidders.

Obviously, the need to gather and review more than 4,000 pages of documents will take a considerable amount of staff time at several levels. The current law allows us to charge only for printed copies of documents that are produced in response to a RTK request. Because much of what was submitted in this instance is in electronic form, the allowable charges to comply with this request likely will be minimal despite the enormous amount of time and cost that will be spent processing it.

One of the amendments proposed in SB444 would permit an agency to levy additional charges to account for staff time when a request is for commercial purposes. The System recommends allowing the same additional fees for processing these types of requests. It certainly could be argued that the purpose of such requests is commercial, in that the information being provided could be used to improve the chances of the requestor submitting a successful bid in the future.

We also receive a number of requests each year from law firms that would appear to be using the RTK law as a less expensive alternative to the legal "discovery" process. In one instance in 2012, such a request resulted in the need to gather and review more than 2,100 pages of documents. At 25 cents per page, such a request would cost, at most, \$525, assuming all of the documents were hard copies; likely far less than if the same materials were obtained through discovery. In essence, we are doing much of the legwork necessary in preparing for a case at a very small cost. The System recommends permitting additional fees to process these types of requests, as well.

It is possible that another proposed amendment to the act actually might limit these types of requests entirely.

Under Section 3 of the proposed revisions to the act, subsection (4) states: “An agency may deny requests to a party to litigation which are related to pending litigation or which were previously made in litigation discovery.” The question we would have would be what constitutes “pending litigation?” Does it mean the possibility that litigation might occur, or that an action actually has been filed? It is possible this provision could result in requests such as the one I just mentioned being denied. This is an area that might need further clarification.

One other area of the bill that causes some concern is the revised definition of a “Local agency.” The revised definition under section (3) includes “any campus police department of a state-owned or state-related college or university.” It always has been our position that PASSHE university campus police departments are part of the System and therefore are subject to all of the provisions of the RTKL as an agency of the Commonwealth. We believe that adding the PASSHE police departments to this definition is unnecessary and could result in appeals for police department records being misdirected to the Court of Common Pleas instead of to Commonwealth Court as is currently the case with PASSHE being a state agency.

We believe the other recommended changes to the act would have little impact on PASSHE or our individual universities.

Steve will now provide you with a campus perspective, after which we would welcome the opportunity to answer any questions you might have.

## Attachment I

### Summary of Right-to-Know requests received by PASSHE Office of the Chancellor in 2012

Response time:

Days	Number
0	44
1	18
2	11
3	5
4	7
5	15
Totals	100

Days	Number
6	3
9	1
19	1
21	1
23	1
25	2
27	1
28	2
30	3
35	1
Totals	16

Miscellaneous	Number
Withdrawn	5
Referred	5
Denials	14
Appeals	2

- 116 requests received
- 100 requests responded to within 5 days, including 44 on the same day on which the request was received
- 14 denials
  - ✓ 2 involved requests for minutes of meetings of the Board of Governors prior to the minutes being approved by the Board (the minutes were provided once they were approved),
  - ✓ 7 involved requests for documents that did not exist
  - ✓ 5 involved requests for information specifically exempted by the RTKL
- 2 appeals (OOR denied both)
  - ✓ 1 related to an arbitration case (information requested specifically exempt from disclosure)
  - ✓ 1 related to pension records, which PASSHE does not maintain