Thank you Chairman Smucker, Chairman Smith, Vice Chairman Brubaker and other esteemed members of the committee, for the opportunity to comment on SB444 and access to public records in Pennsylvania more generally.

I welcome this opportunity to discuss with you the state's Open Records law, now in its fifth year of operation, and ways that it might be improved.

Lancaster County, like many counties, across the Commonwealth, recognizes the importance of state government to the lives of individuals. And it is a sign of that importance to our citizens, I suspect, that all three senators who represent portions of Lancaster County serve on this committee.

Today I want to address the issues surrounding the Open Records law in the broad context of its importance to citizens, to the proper functioning our democratic governance, and, more specifically, to its assurance of accountability in government,

Early in my career, as a young reporter covering township government and later county government, candidates for office and those who worked in government liked to describe themselves as public servants and their work as public service. Those terms were somewhat supplanted in the 90s by use of the phrase "citizen lawmaker" or "citizen mayor." Individuals would bring their experience in the private sector world to government, serve for several terms, then return to private life.

Now neither set of terms is heard as often, yet I believe that the fundamental concept underlying those words still flourishes in government offices at all levels.

Unlike some who cynically criticize government service, I believe that the vast majority of those who work for government do so in large part because they believe in the value of public service. They are police officers, teachers, environmental inspectors, game wardens, highway designers, bank regulators, housing providers, and social service workers – because they want to help their communities, their fellow men and women.

In all these roles, they <u>choose</u> to be <u>public</u> servants.

That is an essential distinction. Those on the government payroll are, in the best sense of the word, servants. They are not masters. They are not employers. Or

bosses. They are the employees of the public's business, hired by taxpayers to carry out the public's will.

The Open Records law is essential to maintaining that relationship between the public and its employees.

Just as the owner or manager of a company needs to know everything about how his or her business functions, so too the public needs to know everything about how their government functions.

The businessperson needs to know the names of employees, how much they are paid, what programs cost, what supplies cost, who the customers are. Without such information, the employer cannot make sound decisions about more employees or less, more services or less,

So, when judging the Open Records law, the test becomes: Does this provision provide information to the public that helps it make informed decisions about the cost and effectiveness of the services that government provides? Does it help assure the accountability of public servants to the public? Of government employees to their citizen employers?

In that light, I wish to comment on several provisions in the bill and one not in the bill, somewhat in order of importance.

First, it is my strong conviction that in all public records, the names, addresses and dates of birth of public employees, excepting police officers and undercover investigators, should be matters of public record.

In running a business, it is fundamental that one knows the identity of his or her employees. In holding agencies accountable – whether they are schools or township parks departments or child welfare workers – it is essential to know who is being paid how much for what services.

In our modern world, when so many people have the same name, a street address and date of birth are effective ways of establishing identity. Without them, it is all too easy to mix up one person with another of the same name.

How big a problem is this? Well, consider:

Vice Chairman Michael Brubaker's name appears hundreds of times in public directories across the nation. There are 28 Michael Brubakers in Pennsylvania. There are four Michael W. Brubakers in Pennsylvania – in Sunbury, Liverpool, Milton and, of course, Lititz.

Minority Chair Matt Smith, forget about it. There are 57 Matt Smiths and more than 100 Matthew Smiths in Pennsylvania. Thirty-one of those are in the Pittsburgh area.

It is important to know that the Matt Smith who runs for public office in western Pennsylvania is not the Matt Smith arrested for aggravated assault and robbery in Washington County. Nor is he the Matthew Smith incarcerated in Bucks County for failure to pay child support, or the Matthew Smith arrested for manufacture of drugs with intent to deliver in Mifflin County. It is specific age and location – address and date of birth – that definitely establish the separate identities of these individuals.

Whether it's a reporter trying to write background on a public employee for a profile, or an employer seeking information on a new hire, or a volunteer agency, like the Boy Scouts, trying to check out the fellow who wants to be a cub leader, it is essential that records shows the full name, address and date of birth of individuals.

Some public employees object to public release of this information. They claim a right to privacy.

To that, there are two arguments.

When a person voluntarily joins the public payroll, he or she gives up the right to privacy regarding these basic factors of identity. Just as there is no expectation of privacy on a public street, there should be no expectation of privacy when being employed or doing business with the public. If a teacher does not want his or her address to be public, they should teach in a private school, not a public one.

Secondly, if public information is misused for criminal purposes – for identity theft, it is the criminal who should be punished, not the law-abiding citizen who properly and legitimately use public information.

Now, in regard to proposed amendments:

First, in Sec 506-d-1, the proposed restriction on information about the workers and work products of third-party contractors defeats the essence of the law. It removes accountability for those to whom government outsources its work. The existing language is clear – records of third parties contracted to perform government functions are considered public. The revision would limit those records to the contract itself and records of the agency related to the contract, a vague, but certainly very narrow, definition.

When the Education Department contracts with a computing firm to compile statistics on the achievement of students across the Commonwealth, are those records public, or is only the contract itself, and its addendums, a matter of public record? Should not highway plans prepared by a consultant engineer be public? Or studies conducted by any consultant for any department?

The rule should be: If public funds are spent, there should be a full public dissemination of who received the money, how it was spent, and the product that resulted.

Second, Sec 708 – b – 5.1 and 6.1 create new exemptions for payment records to public authorities and to tax collectors.

Once again, these provisions would undermine the accountability that these public agencies owe to the citizenry.

To assure fairness in the payment of utility charges, or fairness in the payment of property taxes, for instance, it is not sufficient to have a certificate that indicates some unknown amount of taxes were paid.

There have been instances, in my recollection, where unscrupulous authority boards or employees granted preferential billing to favored businesses or family members. Similar instances can be found of assessment boards reducing taxes of friends and raising taxes of opponents.

These proposals are an open invitation for such acts of favoritism. The light of open records is the best bleach for removing any such temptation.

Third, in Section 708, exemption 17 regarding noncriminal investigations remains overly broad. The change allowing for public release of safety inspections is commendable. But should there not also be similar allowances for

environmental inspections, public housing inspections, health inspections, nursing home inspections and so on.

When public officials conduct a noncriminal investigation, whatever the target, should not the findings become public when the investigation is completed? Nothing in the section speaks affirmatively of the right of the public to know the results of investigations by public employees using public funds.

Fourth, several provisions seem intended to shield emergency services from full accountability to the public that employs them.

The new section defining a "time response log" inadvertently undermines itself by allowing public safety officials to mask the address of an incident. As it now reads, officials could provide a street address, a cross street or a mile marker. It would be better to state that the log will provide the specific street name and number of an incident location, or in the absence of such street number – on an isolated stretch of highway – the cross street or mile marker nearest the scene of the incident.

Similarly, exception 18 of Sec.708, regarding emergency dispatches, exempts public release of the home address of the individual who requests emergency assistance. Why allow this – except to mask full and accurate reporting about individuals who summon help from public agencies? How can the public know if an emergency service has responded in timely fashion to a house, if the address of the house is secret?

More egregiously, the new exemption 32 would remove all records of volunteer organizations that receive public funds from public scrutiny. This is simply bad policy – secrecy is a sure way to undermine public support for these organizations that so much need public support.

People grow suspicious of organizations that hide their finances from the public. They approve, and give generously, to those organizations that demonstrate good stewardship of funds, whether private or public.

The rule should be that the records of public funds given to a fire company, ambulance service or other volunteer organization should be fully open to the public. The organizations' other, private funds may be kept private to the extent allowed by the group's charters or federal tax statutes.

Finally, on the matter of reducing the workload of disruptive or high-volume open record request.

I do think that the requirement that public agencies be fairly compensated for bulk requests for information, made for commercial purposes is reasonable. At a time when municipal, county and state governments are dealing with tight budgets, it seems right that public agencies should be compensated at an increased level for commercial use of public records. In my personal view, municipalities, county and state agencies should not be compelled to be unpaid partners in private sector enterprises.

On the other hand, the provision of Sec. 506-3 that an agency may go to court if it feels a request is "unduly burdensome," seems horribly ill conceived. It is an automatic out for an agency that wants to avoid accountability. When a request is filed, the agency can simply file a petition to the court, a proceeding that would deter many requestors who do not have the legal resources to go to court. Release of documents could be put off for weeks and months, if not years.

In conclusion, returning to the big picture, I urge that, as you evaluate the requests of local and state government for restrictions on the flow of public information, you ask the question, why?

Why should information gathered by public employees, paid for by public dollars, not be made public? There are several good reasons, already covered by existing law. Personal health records, police investigatory records, the addresses of abused women, these are legitimate areas for protection.

But in all these other cases, please ask yourself: Are we protecting the interests of the public, or are we protecting agency employees from accountability to their employers?

Thank you again for the opportunity to comment on SB444. I am happy to take questions at this or any other time.