CCAP COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA
Serving Counties Since 1886

CENTRAL OFFICE
17 North Front Street, Harrisburg, PA 17101-1624
phone (717) 232-7554 • fax (717) 232-2162

NORTH OFFICE
PO Box 60769, Harrisburg, PA 17106-0769
phone (717) 526-1010 • fax (717) 526-1020

TESTIMONY ON PENNSYLVANIA RIGHT-TO-KNOW LAW

PRESENTED TO THE
SENATE STATE GOVERNMENT COMMITTEE

BY

DOUGLAS E. HILL
EXECUTIVE DIRECTOR

October 21, 2013
Harrisburg, PA

On behalf of the County Commissioners Association of Pennsylvania (CCAP), I want to thank Chairman Smucker, Chairman Smith and members of the Senate State Government Committee for the opportunity to submit comments regarding SB 444, which would amend the state's Right-to-Know Law. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

We believe that government has responsibility for maintaining records of its actions, and records of the broad range of public transactions. This responsibility includes retaining records as appropriate for the use of future generations, making them accessible for individual use, and making them available as a means of promoting governmental accountability. We believe there is a balance that must be maintained among access, privacy and security concerns.

As you know, in the 2007-2008 legislative session, the General Assembly undertook significant work to update the Right-to-Know Law, which ultimately became Act 3 of 2008. While retaining some of the language of prior law, Act 3 also made changes to definitions, requests for access, electronic access, retention, response standards and redaction. Most important, it changed the presumption on records and burden of proof on their disclosure; rather than a limited number of records being open and the burden of proof being on the requester, all records became open unless covered under an exception and the burden of proof falls to the government agency to show that a record meets an exception.

Contrary to what many might suppose, our Association supported the rewrite, and invested a considerable amount of time working with all interested parties in crafting what became Act 3. The issue for us was that the prior law was written in an era of manual typewriters, and gave us no guidance on the scope and nature of open records in an age of new media and technologies.

In general, the law has provided us the guidance we need, while striking an appropriate balance between the public's need for access and the privacy rights of the individuals we serve. That said, with five years' experience under the law, there are some common concerns that arise on a regular basis. Chief of these is the volume of requests we get from commercial ventures, which file requests that amount to data mining for commercial purposes; our belief is that the law is intended to allow citizens – corporate or individual – to monitor the activities of their government, not to use government resources for private profit. Second, there are recurring issues of the dividing line of personal privacy versus public access, often revolving around addresses, identity of victims, and related matters.

In this context, we welcome the committee's initiative in examining SB 444 which would make several changes to existing law, many in response to concerns that have been raised since the enactment of Act 3. I welcome this opportunity to provide commentary, particularly on the inmate access provision in the bill, which the committee is focusing on today.

Counties have reported an ongoing issue with time-consuming requests from prison inmates. Sometimes, these requests seek records that are not in the county's possession or that do not even exist, but the agency is required to respond to all requests and to invest additional time if an appeal is taken. While section 506(a)(1) of the Right-to-Know Law provides an exception for disruptive requests, allowing an agency to deny a requester access to a record if the requester has made "repeated requests for that same record, and the repeated requests have placed an unreasonable burden on the agency," this language is only helpful when a duplicate item is sought. It provides no

relief for multiple, different requests. We understand, though, that a balance must be struck between the ability of inmates to procure information relevant to their own cases and the ability of inmates to submit excessive and obviously frivolous requests. During a Senate State Government Committee hearing in March 2012, Bucks County open records officer Regina Armitage suggested looking at Rule 4011 of Pennsylvania Rules of Civil Procedure, which provides limitations on discovery or deposition "which is sought in bad faith or that would cause unreasonable annoyance....burden or expense to the deponent or any person or party" as an example of language that may help minimize the burden and expense of these requests.

Counties manage huge volumes of information, not only about county governance but also records covering all manner of corporate, civil, and judicial interactions. We believe we have a duty to be open and transparent to the public, but at the same time we have a duty to assure that the privacy rights of individuals are respected and protected. We are pleased that the Committee has undertaken this review of the impacts of the Right-to-Know law, now that we have enough experience with its requirements and idiosyncrasies but early enough in its history that we can deal meaningfully with elements needing change. We look forward to working with you on these and other recommendations affecting our records responsibilities. I would be happy to discuss these comments further and answer any questions you may have at your convenience.