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April 22, 2021

PA Senate State Government Committee

Re: Support SB 312 and SB 552

Dear Senator,

On behalf of our organizations’ collective memberships, **we are writing to request your support for Senate Bill 312 and Senate Bill 552** which are scheduled to be considered by the Senate State Government Committee on Tuesday, April 27th.

**Senate Bill 312 (Brooks)** would create a process under which agencies may charge a reasonable fee for responding to requests for records made for commercial purposes.  Under the bill, a commercial purpose would include selling or reselling any portion of the records, using names and addresses from the records for commercial solicitation, or any other purposes which are intended to generate revenue.  Commercial purpose would not include requests from the media, or nonprofit educational or noncommercial scientific institutions.  Additionally, the bill provides a modest fee structure at no more than the hourly wage of the lowest-paid employee capable of complying with the request, or the requester and agency may enter into an alternative fee agreement.  Commercial requesters may also ask for an estimate of the cost to be incurred, and may submit an appeal to the Office of Open Records (OOR) related to the fees.

Under the current Right-to-Know Law (RTKL), school districts, local governments, and municipal authorities are required to spend staff time and resources in order to comply with requests for records from commercial entities, many from out-of-state companies, for information that will be used for marketing, sales, and other profit-making purposes.  In addition, many of these types of requests are often vague, overbroad, or voluminous and can take hours to locate a wide array of records, review/compile information, possibly redact information, and may even require the involvement of an attorney to evaluate the request.

School districts, local governments, and municipal authorities are currently unable to recoup any of the costs associated with complying with these types of requests because the current fee structure in law does not allow any fees beyond duplication and mailing costs.  As a result, taxpayers are being forced to foot the bill for the search, retrieval, review/compilation, and redaction of records requested for the purpose of generating revenue for the requester.  While our members are not concerned about the use of public records for commercial purposes, they do not believe that taxpayers should be on the hook for the costs associated with requests made for a commercial purpose.  School districts, local governments, and municipal authorities are not looking to profit from the provisions of this bill, but rather to recoup the costs incurred by taxpayers in providing commercial entities with information which they will then use to generate revenue.

**Senate Bill 552 (Dush)** would create a new process by which agencies may petition the OOR for relief from a vexatious requester.  Vexatious requesters are individuals who use the RTKL with malicious intent to intimidate, harass, or punish an agency, which results in bogging down the agency and wasting taxpayer resources.  As an example, recently a township was inundated with over 175 RTKL requests and 80 OOR appeals in a five-month period from just one individual.  The township incurred over $85,000 in costs responding to those requests and appeals.  Left with no recourse under the RTKL, the township was forced to incur additional costs to petition the Court of Common Pleas for relief outside the RTKL.

School districts, local governments, and municipal authorities have seen a small but steady increase in recent years in the number of individuals using the law in this troubling manner - which was never anticipated by the General Assembly when the original statute was passed.  Under Senator Dush’s bill vexatious requesters would be identified through a number of factors, and the OOR process would include information gathering, hearings, and possible mediation before a final opinion is rendered.  Relief from a requester identified as vexatious could include an order that the agency need not comply with a request from the vexatious requester for up to one year.  While cases of vexatious requesters are not the norm, there are certainly individuals who have and continue to abuse loopholes in the RTKL to attack agencies and waste taxpayer resources, and the time has come to address this significant concern.

Our organizations would like to thank Senator Brooks and Senator Dush for their leadership on these issues, and **we strongly encourage every legislator to support these needed reforms by passing the bills without amendment**.  If you have any questions please feel free to reach out.

Thank you,

County Commissioners Association of Pennsylvania

Pennsylvania Municipal Authorities Association  
Pennsylvania Municipal League

Pennsylvania School Boards Association

Pennsylvania State Association of Boroughs

Pennsylvania State Association of Township Commissioners

Pennsylvania State Association of Township Supervisors