



## MEMORANDUM

**TO:** The Pennsylvania Senate State Government Committee

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** September 19, 2022

**RE: OPPOSITION TO HB 2524 P.N. 3235 (SCHMITT)**

**Bill summary:** [HB 2524](#) (PN 3235) would amend Pennsylvania's [Right to Know Law](#) (RTKL) to make a variety of updates and changes to the statute, including provisions regarding vexatious requesters, requests by incarcerated people, exceptions to public records, retention of records, commercial requests, appeals processes, and fees.

HB 2524 is a well-developed bill that proposes some useful and beneficial changes to the current law. Unfortunately, two provisions in particular—(1) designating some people as “vexatious requesters” and (2) limiting requests from incarcerated people—establish dangerous and potentially unconstitutional precedents for allowing the state to pick and choose to whom it responds.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 2524.**

### **HB 2524 would likely violate a requester's First Amendment right to petition the government.**

HB 2524 creates a new section under the Right to Know Law, Section 906, to provide “relief from vexatious requesters,” which would allow local agencies to designate people “vexatious requesters” (a requester whose sole intention is to annoy or harass the local agency) and subsequently deny their request. It would also permit the local agency to seek an order from the Office of Open Records allowing them to deny all future requests from the vexatious requester for up to one year.

In [Campbell v. Pennsylvania School Boards Association](#) (2018),<sup>1</sup> the United States District Court for the Eastern District of Pennsylvania held that right to know law (RTKL) requests constitute protected speech under the First Amendment's right to petition the government, and as such are permitted to be unreasonable and even harassing as long as they represent “a genuine effort to procure governmental action.”<sup>2</sup> The Court's analysis was squarely grounded in First Amendment precedent holding courts “regularly recognized that statutorily authorized petitions” such as RTKL requests, “are protected by the First Amendment.”<sup>3</sup> The federal court found that even requests perceived by government agencies as problematic are protected by the First Amendment, no matter how voluminous or annoying they may be. Even in a case with facts as extraordinary as the *Campbell* case, the District Court recognized and affirmed the use of the RTKL process as constitutionally protected speech.

If HB 2524 were to become law, it would likely be challenged as unconstitutional. Furthermore, HB 2524 could open the door to future restrictions on requesters simply because the agency does not like the requester or would prefer to avoid having to respond—in fact, this kind of alleged agency bias was the subject of Republican accusations against the administration in several COVID-related RTKL disputes.

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<sup>1</sup> [Campbell v. Pa. Sch. Bds. Ass'n.](#), 336 F.Supp. 3d 482 (2018).

<sup>2</sup> *Id.*, at 495.

<sup>3</sup> *Id.*, at 496.

**HB 2524 would impose categorical limits on information that incarcerated people may request.**

HB 2524 also creates another new section under the Right to Know Law, Section 508, that prohibits incarcerated people from making right to know requests outside of narrow exceptions. There is absolutely no reason or justification for (1) establishing such a narrowly construed list of permitted information that may be requested—*by anyone*, and (2) categorically and arbitrarily imposing such a limitation on one particular type of individual.

Any legislation that allows the government to pick and choose to whom it responds is dangerous, likely unconstitutional, and creates processes that are needlessly burdensome and punitive to unrepresented citizens who can be targeted by a hostile agency. Individuals who are incarcerated still have rights under the Constitution and the laws of Pennsylvania. They should not be subject to additional punishment and discrimination by being categorically banned from submitting RTKL requests seeking public information—information that any non-incarcerated person would be free to request.

**For these reasons, we ask you to oppose House Bill 2524.**