



## MEMORANDUM

**TO:** The Pennsylvania Senate

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

**DATE:** October 15, 2022

**RE: OPPOSITION TO SB 492 P.N. 1923 (MASTRIANO)**

**Bill summary:** [SB 492](#) (PN 1923) would amend [Section 506\(a\)\(1\)](#) of Pennsylvania's [Right to Know Law](#) (RTKL) to create a new subsection permitting agencies to deny requests made by a party involved in litigation against that agency. Specifically, an agency may deny a litigant's request when the request:

- Is material to a pending civil action or proceeding to which the agency is a party and the Pennsylvania Rules of Civil Procedure or the Federal Rules of Civil Procedure apply; or
- Was previously made in litigation discovery.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 492.**

**For the 65 years it has had an open records law, Pennsylvania has never defined access to public records based on who is making the request. SB 492 would break that precedent.**

Individuals who are involved in litigation against an agency, just like any other residents of Pennsylvania, currently have full and equal access to the RTKL. While we applaud the committee amendment striking the provision to limit incarcerated people's access to public records, SB 492 retains a provision that establishes the same dangerous precedent.

Under the Right to Know Law, the reason for a document request or the identity of a requester is irrelevant. The only question is whether the record is a public record. If it is, then all members of the public are entitled to access it, regardless of who they are or why they want it. It is the nature of a document itself that determines whether the document should be released. Notably, neither the RTKL nor its predecessor have ever conditioned access to public records based on the identity of the requester. From 1957 until 2008, any "citizen of the Commonwealth of the Pennsylvania" had a right to inspect records. Our current Right to Know Law expanded that definition by permitting requests from any "person that is a legal resident of the United States."

**For the 65 years that it has had an open records law, Pennsylvania has never defined access to public records based on who is making the request.**

**Denying access to requesters who happen to be involved in a lawsuit against the government agency invites clear conflicts of interest.**

Again, access to otherwise public records should not depend on who is making the request, including parties to litigation against an agency. This is especially true when the litigation alleges wrongdoing by a government agency—indeed, this is *precisely* when the law should be the most vigilant in protecting the public's access to government records. If the record is public, it's public, regardless of the requester's status in a pending lawsuit.

By conditioning access to public records based on who is making the request, SB 492 would set a dangerous precedent and introduce an untested interpretation of how the Right to Know Law has been understood and applied since it was first enacted.

**For these reasons, we ask you to oppose Senate Bill 492.**