



# THE CAUCUS

SPECIAL SUNSHINE WEEK EDITION

A WATCHDOG PUBLICATION OF LNP MEDIA GROUP, INC. | TUESDAY, MARCH 12, 2018 | \$4.25

# CAR TROUBLE

A district attorney. A Toyota Highlander.  
And the legal battle to keep drug forfeiture  
spending a secret.

COVER STORY » PAGE 6

## THE INTERVIEW



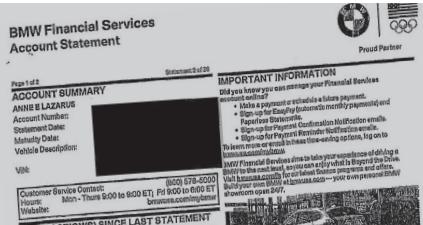
State Sen. John Blake talks about his efforts to make state government more transparent through the Right-to-Know Law. **PAGE 10**

## GUEST COLUMN



Jennifer McDonald of the nonprofit Institute for Justice makes a case for opening up civil-asset forfeiture records across the country. **PAGE 13**

## OVERHEARD ON 3RD



A look back at redactions, court challenges and nonresponses in the quest for transparency with regard to public records. **PAGE 14**

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A look at wins and losses, redactions, court challenges and nonresponses in the battle over open records.



FILE PHOTO

## THE WEEK AHEAD

Events around the Capitol this week:

**MARCH 11 - 29**  
**LGBTQ+ EQUALITY**

*Senate Fountain Area*

A traveling display, “The Road to LGBTQ+ Equality in Pennsylvania,” highlights equality and nondiscrimination ordinances that have been put into place across the commonwealth.



### SEND US A NEWS TIP

If you know of a good story, are holding a political event or fundraiser, or want to share information about a new hire in your agency or firm, please send an email to [tips@CaucusPA.com](mailto:tips@CaucusPA.com) or mail to PO Box 1328, Lancaster, PA 17608-1328

Please remember to include contact information unless you wish to remain anonymous.

## HEARINGS

Committee hearings in the House and Senate this week.

**9 A.M., MARCH 12**  
**HOUSE HUMAN SERVICES COMMITTEE**

*Room G50, Irvis Office Building*

Public hearing on bills relating to bed registry and warm handoff for addiction treatment.

**9:30 A.M., MARCH 12**  
**HOUSE HEALTH COMMITTEE**

*Room 140, Main Capitol*

Public hearing on barriers to employment in the health care field.

**9 A.M., MARCH 13**  
**HOUSE FINANCE COMMITTEE**

*Room 205, Ryan Office Building*

Voting meeting on H.B. 262 from Rep. Carl Walker Metzgar, which would eliminate the inheritance-tax rate for transfers of property to or for the use of a child age 21 or younger from a natural parent, adoptive parent or step-parent; H.B. 296 from Rep. Tarah Toohil, which would provide a \$1,000 adoption tax credit and a \$500 foster care tax credit for families who provide permanency to children in the care of Pennsylvania’s Department of Human Services; H.B. 330 from Rep. Joe Emrick, which would make technical corrections to the Property Tax Relief Act; H.B. 538 from Rep. Marty Flynn, which would exempt from state income taxes Olympic prize winnings and medals received from the United States Olympic Committee for those competing in the Olympic Games or Paralympic Games; and H.B. 628 from Rep. Aaron D. Kaufer, which would extend the authority of the treasurer to invest money in the Treasury according to the prudent investor standard.

**9 A.M., MARCH 13**  
**HOUSE TOURISM & RECREATIONAL DEVELOPMENT COMMITTEE**

*Room B31, Main Capitol*

Presentation from the Philadelphia Orchestra.

**9:30 A.M., MARCH 13**  
**HOUSE HEALTH COMMITTEE**

*Room 60, East Wing*

Overview of the pharmacy benefit manager report.

**10 A.M., MARCH 13**  
**HOUSE LABOR & INDUSTRY COMMITTEE**

*Room G50, Irvis Office Building*

Voting meeting on H.B. 280 from Rep. R. Lee James, which would increase the periods of time allotted for parties to appeal the determination of an Unemployment Compensation Service Center and the decision of a referee; H.B. 422 from Rep. Sheryl M. Delozier, which would create a building code official “trainee” program to ensure Pennsylvania has sufficient building code officials; and H.B. 425 from Rep. Ryan E. Mackenzie, which would create the CareerBound program to strengthen the connection between students and high-priority careers.

**10 A.M., MARCH 13**  
**HOUSE PROFESSIONAL LICENSURE COMMITTEE**

*Room B31, Main Capitol*

Voting meeting on H.B. 64 from Rep. Harry Readshaw, which would add a provision to the Bureau of Professional and Occupations Affairs Act that would allow professionals to accrue continuing education credits; and H.B. 138 from Rep. Christopher B. Quinn, which would allow physical therapist and physical therapist assistant students to sit for their licensing examination up to 90 days prior to graduation.

**2 P.M., MARCH 14**  
**HOUSE DEMOCRATIC POLICY COMMITTEE**

*Monroeville Municipal Building, Monroeville*

Public hearing on transportation.

**1 P.M., MARCH 15**  
**HOUSE DEMOCRATIC POLICY COMMITTEE**

*Beth El Congregation, Pittsburgh*

Public hearing on disability issues.



## THE CAUCUS

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FROM THE EDITOR

# The work that remains.

The Right-to-Know Law is the most important tool for journalists in Pennsylvania, but governments still find ways to obstruct access to records

» TOM MURSE

**T**his really happened: A citizen writing about her local government for her local newspaper asked a top township staffer for a detailed meeting agenda, a document prepared at taxpayer expense. The response: Sorry, you'll need to make a written request, and we'll get back to you — in five business days. The staffer was holding a copy of the packet in his hands at the time.

This, too, is a true story: Pennsylvania's highest-ranking state senator tried to charge reporters \$160 an hour for a detailed look at how his campaign spent money — documents that are considered a matter of public record under the state's election code. The total bill, had the senator not backpedaled under pressure from this news organization, would have been about \$2,000.

One more: A charter school played dumb when pressed for the name of its open records officer; every state and local agency must have someone designated as such. "No clue," responded one employee.

The school was, to no one's surprise, unresponsive to repeated requests for basic information about how it was spending taxpayer money.

We live in exciting times. The internet has made it easy and relatively inexpensive for governments and public schools to share information — information that is compiled and vetted and quickly disseminated with context by this and other news organizations across the land.

It has allowed for the digitization of libraries of newspapers, literature and history, making them the com-

mon property of the world.

It has given anyone with a smartphone and data plan the ability to stream terabytes of footage from government meetings to any citizen with a smartphone and data plan in the same town or on the other side of the globe. And it has allowed citizens to organize and petition their government.

Yet obtaining meaningful government meeting agendas and other basic yet vital information remains a challenge.

Understanding how safe our neighborhoods are — perhaps the most fundamental information we need — is off-limits because many counties, at the request of local police, have made dispatches private, and some authorities are in no hurry to communicate with the public in a timely manner.

(It took 24 hours for one Lancaster County force, which employs a full-time officer to communicate with the public, to notify citizens there'd been a murder-suicide recently. It then declined to answer questions.)

The golden age of information and connectivity clearly hasn't reached many cities, boroughs and townships, even those with healthy tax bases and millions sitting in reserves.

Neither has a Right-to-Know Law that, since 2009, presumes most records are open to

inspection and places the burden on governments to prove otherwise — a law whose objective is to empower citizens by granting them access to information about the activities of their government.

Want to find out how your local district attorney is spending the proceeds of drug forfeitures?

Good luck trying.

The trend bends toward obstruction and opacity instead of access and transparency, as you'll note from this week's cover story by Carter Walker.

This is a problem for reporters and citizens alike.

Consider the number of appeals to Pennsylvania's Office of Open Records, the agency that enforces the Right-to-Know Law. In 2018, it handled 2,228 cases, and most of them — 1,268, or 57 percent — were filed not by journalists but by citizens who had been denied access to records. Appeals filed by the news media accounted for about 6 percent of the total, according to the office.

In Harrisburg, the Pennsylvania NewsMedia Association runs a legal hotline. It gets about 2,000 calls every year. That's more than five a day, which is not terribly surprising given there are 1,546 townships, 959 boroughs, 500 public school districts, 67 counties and 56 cities in Pennsylvania — each with its own governing body.

"There's no shortage of public access and transparency issues in the commonwealth," said Melissa Melewsky, media law counsel for the NewsMedia Association.

What are citizens to do in the face of such obstruction?

Persevere.

Understand that our reporters stand with you and stand to serve you.

"The first duty of the press is to obtain the earliest and most correct intelligence of the events of the time, and instantly, by disclosing them, to make them the common property of the nation," former Times of London

## Spotlight PA investigative collaborative names editor

Spotlight PA, a new, Harrisburg-based investigative journalism collaboration, has hired an award-winning reporter and editor from New Jersey as editor in chief.

Christopher Baxter, the investigations editor at NJ.com and The Star-Ledger, will lead a 12-member team in a collabora-



Christopher Baxter

tion with LNP Media Group, publisher of The Caucus, The Philadelphia Inquirer and the Pittsburgh Post-Gazette.

"During his time in New Jersey, (Baxter) has produced high-level investigative work that has prompted meaningful change in the form of new state laws and regulations, criminal investigations, resignations, legislative hearings and more," said Stan Wischnowski, executive editor of the Inquirer, Philadelphia Daily News and Philly.com.

Previously, Baxter was the Mike Wallace Fellow in Investigative Reporting with the Knight-Wallace Fellowships at the University of Michigan. He was a statehouse investigative reporter in The Star-Ledger's Trenton Bureau and began his reporting career at The Morning Call in Allentown.

Spotlight PA's collaborative initiative expands upon the work of The Caucus, which LNP Media Group launched in 2017.

The project is supported by the Philadelphia-based Lenfest Institute for Journalism.

Spotlight PA has a three-year commitment of nonprofit funding to support a staff that includes four Harrisburg journalists from the three news organizations. Temple University student interns and a journalism fellow will join the effort.

"The mission of this team is to hold the powerful private and public forces to account, producing journalism that leads to change that serves the public good," Wischnowski said.

editor John Thadeus Delane wrote in 1852.

There remain too many roadblocks.

But Pennsylvania has made great strides since the Right-to-Know Law was revamped a decade ago. And those improvements are worth celebrating, as we do now.

Happy Sunshine Week, and thanks for reading. ☺

Tom Murse is the editor of *The Caucus* and a managing editor at LNP + LancasterOnline in Lancaster County. He can be reached at [tmurse@lnpnews.com](mailto:tmurse@lnpnews.com) and 717-481-6021.







## THE MONEY RACE

# FUNDRAISERS

A roundup of receptions and other events to benefit re-election campaigns

**7:30 A.M., MARCH 12**  
**RECEPTION FOR REP. MARY JO DALEY**  
*Harrisburg Hilton*  
\$250 to \$2,500

**7:30 A.M., MARCH 12**  
**RECEPTION FOR REP. BUD COOK**  
*House Republican Campaign Committee*  
*Harrisburg*  
\$250

**7:30 A.M., MARCH 12**  
**RECEPTION FOR REP. BRAD ROAE**  
*Carley's Ristorante*  
*Harrisburg*  
\$400 to \$1,000

**8 A.M., MARCH 12**  
**RECEPTION FOR**  
**REP. BRANDON MARKOSEK**  
*McGrath's Pub*  
*Harrisburg*  
\$250 to \$500

**5 P.M., MARCH 12**  
**RECEPTION FOR REP. GREG ROTHMAN**  
*West Shore Country Club*  
*Camp Hill*  
\$500 to \$2,500

**5:30 P.M., MARCH 12**  
**RECEPTION FOR SEN. RYAN AUMENT**  
*Rubicon, Harrisburg*  
\$500 to \$3,000

**5:30 P.M., MARCH 12**  
**RECEPTION FOR REP. PAM SNYDER**  
*McGrath's Pub, Harrisburg*  
\$500 to \$1,000

**6 P.M., MARCH 12**  
**RECEPTION FOR**  
**REP. DONNA OBERLANDER**  
*Anna Rose Bakery*  
*Harrisburg*  
\$1,000 to \$5,000

**8 A.M., MARCH 13**  
**RECEPTION FOR REP. RUSS DIAMOND**  
*Stock's on 2nd*  
*Harrisburg*  
\$300 to \$1,000

**8 A.M., MARCH 13**  
**RECEPTION FOR REP. HARRY READSHAW**  
*Hilton Harrisburg*  
\$500 to \$2,500

**8 A.M., MARCH 13**  
**RECEPTION FOR REP. JOE WEBSTER**  
*Zembie's Sports Tavern*  
*Harrisburg*  
\$250 to \$2,500

**6 P.M., MARCH 15**  
**RECEPTION FOR REP. JEANNE MCNEIL**  
*Coplay American Club Pavilion*  
*Coplay*  
\$250 to \$1,500

**4 P.M., MARCH 16**  
**RECEPTION FOR SEN. DAN LAUGHLIN**  
*MillCreek Brewing, Erie*  
\$25

**8 A.M., MARCH 18**  
**RECEPTION FOR REP. GARY DAY**  
*127 State St., Harrisburg*  
\$250 to \$500

**11 A.M., MARCH 18**  
**RECEPTION FOR REP. ROB KAUFFMAN**  
*Pennsylvania Rural Electric Building*  
*Harrisburg*  
\$300 to \$1,000

**5:30 P.M., MARCH 18**  
**RECEPTION FOR REP. JOHN GALLOWAY**  
*McGrath's Pub*  
*Harrisburg*  
\$500 to \$5,000

**8 A.M., MARCH 19**  
**RECEPTION FOR**  
**SEN. STEVE SANTARSIERO**  
*Old Town Deli*  
*Harrisburg*  
\$500 to \$2,500

**8 A.M., MARCH 19**  
**RECEPTION FOR REP. JIM MARSHALL**  
*House Republican Campaign Committee*  
*Harrisburg*  
\$250 to \$500

**8 A.M., MARCH 19**  
**RECEPTION FOR SEN. JOHN YUDICHAK**  
*Harrisburg Hilton*  
\$500 to \$1,000

**8 A.M., MARCH 19**  
**RECEPTION FOR SEN. MARIA COLLETT**  
*Harrisburg Hilton*  
\$500 to \$2,500

**8 A.M., MARCH 19**  
**RECEPTION FOR SEN. MIKE REGAN**  
*Home 231*  
*Harrisburg*  
\$500

**11:30 A.M., MARCH 19**  
**RECEPTION FOR SEN. SCOTT MARTIN**  
*Firehouse Restaurant*  
*Harrisburg*  
\$500 to \$1,000

**5:30 P.M., MARCH 19**  
**RECEPTION FOR REP. SUE HELM**  
*The Country Club of Harrisburg*  
*Harrisburg*  
\$500 to \$5,000

**6 P.M., MARCH 19**  
**RECEPTION FOR SENATE MAJORITY**  
**LEADER JAKE CORMAN**  
*Level 2*  
*Harrisburg*  
\$1,000 to \$2,500

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SAM JANESCH | THE CAUCUS

Lancaster County District Attorney Craig Stedman speaks outside of the state Capitol in Harrisburg on April 24, 2017, advocating for stricter animal cruelty laws in Pennsylvania. Lawmakers and Libre stand behind him. Records show Stedman drove a Toyota Highlander, which is leased with drug forfeiture proceeds, to Harrisburg that day.

# DRIVING ON DRUG MONEY

In one county, a district attorney's use of forfeiture money to lease an SUV is under scrutiny. But it is not unique in Pennsylvania.

» CARTER WALKER

**O**n a sunny summer afternoon in 2017, Lancaster County District Attorney Craig Stedman joined dozens of legislators, animal-rights advocates and their dogs on Capitol grounds to celebrate the governor's signing of Libre's Law, which strengthened the penalties for animal abuse.

The event was perfectly staged for television cameras and photographers. At one point, Libre, the Boston terrier whose rescue from a kennel sparked the movement, had his paw dipped in paint and stamped on a copy of the bill.

"Now we've got some real teeth — no pun intended — to the laws," Stedman told a newspaper reporter.





# County launches review

The following statement was issued by the three Lancaster County commissioners, Republicans Josh Parsons and Dennis Stuckey and Democrat Craig Lehman. They said the district attorney “apparently went outside of the county procurement process” in leasing a work vehicle.



Josh  
Parsons

*The Board of Commissioners was not aware that the District Attorney had leased a vehicle for his individual use in 2016. We are now learning that he apparently went outside of the County procurement process using drug forfeiture funds to do so and leased a vehicle for his individual use.*

*No other county official has such a vehicle.*

*There is a standard procedure in place for County departments when a department needs to procure a vehicle. It involves going through the County Purchasing Department. That apparently was not done here.*

*According to County Code, which is the governing law in this case, the Board of Commissioners is the contracting authority for all contracts entered into by County entities. This includes County elected row offices. Therefore, any contract not approved by the Board, including a vehicle lease, is improper.*

*This situation is exactly the type of situation that calls for transparency of how drug forfeiture funds are being used. This is why the Board of Commissioners is seeking to intervene in the open records case now before the Court of Common Pleas of Lancaster County. While we recognize that all sensitive law enforcement information must be redacted, the release of other financial information is required for transparency and good government.*

*Further, despite the District Attorney's claim that the release of such financial information is not permitted by law, both the Pennsylvania Office of Open Records and another Court in Pennsylvania have found that release is appropriate and, in fact, required.*

*Lastly, we are reviewing whether this vehicle was ever used for non-County business purposes as well as the matter of mileage. We need to ensure all payments made in connection with this vehicle were proper.*



Dennis  
Stuckey



Craig  
Lehman

Afterward, Stedman hopped into a 2016 Toyota Highlander leased with money that had been designated by state law for use fighting drug crimes and drove the nearly 40 miles back to Lancaster County.

Since January 2016, Stedman has spent more than \$21,000 in drug forfeiture proceeds, the largest source of revenue for his county's taxpayer-supported drug task force, to lease and maintain the SUV, records show.

Stedman has driven the SUV to Harrisburg at least 16 times since spring 2017, parking records show. His expense reports show he used the vehicle for district attorney business — attending legislative hearings, meeting with the governor's staff, and taking part in law conferences and training — that was not directly related to drug-law enforcement.

The lease “raises serious constitutional issues under the Eighth Amendment's excessive fines clause,” said University of Pennsylvania law professor Louis Rulli, an expert on civil asset forfeiture. “If local prosecutors are using drug forfeiture proceeds to purchase or lease expensive cars for general office purposes — rather than to combat drug crime and strictly enforce the state's Controlled Substances Drug Act — the Pennsylvania Legislature should promptly convene oversight hearings on the use of such funds.”

Stedman's use of drug forfeiture money to pay for a car lease is rare but not unique among district attorneys in Pennsylvania, a survey of several large or surrounding counties found; the top prosecutor in neighboring Berks County does the same thing.

And the monthly payments of nearly \$300 for Stedman's SUV represent only a small portion of drug forfeiture spending in Lancaster County, which tops \$1 million a year.

But the lease payments were made at the same time Stedman claimed publicly that the drug task force, which is battling the opioid epidemic and influx of cheap heroin, faces a “funding crisis” and should have a more stable source of financing, most likely in the form of additional taxpayer

money.

The use of drug forfeiture money for a vehicle also comes amid a national debate over the propriety of civil asset forfeiture and how the proceeds are spent — details that are hidden from public view in Lancaster and many other Pennsylvania counties.

The district attorney is fighting LNP Media Group's request to review records of hundreds of thousands of dollars in seized drug-related property here every year. The state Office of Open Records has ordered Stedman to release those records, but the district attorney has appealed to the county Court of Common Pleas and argues the law shields expenditure records from disclosure. (LNP Media Group is publisher of The Caucus.)

Stedman's vehicle expenses, though, offer a rare glimpse into the use of drug forfeiture proceeds.

Stedman did not respond to a list of specific questions about the lease LNP, the newspaper in Lancaster, emailed to him. District attorney's office spokesman Brett Hambright instead issued a lengthy written statement defending the lease but declined to comment on whether Stedman uses the vehicle for personal errands. The office also has declined to provide a copy of the lease, which is with a local Toyota dealership, or say who signed the document. LNP has appealed the

denial.

The Lancaster County Board of Commissioners, responding to an inquiry from LNP, said it had been unaware of Stedman's lease and described it as “improper.”

“We are now learning that he apparently went outside of the County procurement process using drug forfeiture funds to do so and leased a vehicle for his individual use. No other county official has such a vehicle,” the Republican-majority board said in a written statement Monday.

But the lease had been approved by county Controller Brian Hurter in January 2016, according to a document made public last week by the district

attorney's office.

The board of commissioners also said it was launching a review of “whether this vehicle was ever used for non-County business purposes as well as the matter of mileage.”

From 2016 through 2018, Stedman also sought and received reimbursement for \$1,958 in mileage — including \$41.73 for the Libre's Law event — under a county policy that allows employees to recover wear and tear on their personal cars while driving on official business.

“We need to ensure all payments made in connection with this vehicle were proper,” the commissioners said.

County policy distinguishes between government-owned and personal vehicles to determine how employees are reimbursed. Drivers who use a government fleet vehicle can claim reimbursement for gasoline but not wear and tear. Drivers who use personal vehicles can get reimbursement for wear and tear.

It is unclear why Stedman, whose spokesman described the vehicle as a “work vehicle,” sought mileage reimbursement for wear and tear on a vehicle he does not own.

Stedman, in a written statement, later acknowledged “overpayments on mileage expense reports” and said he asked the county controller to “take appropriate steps to correct any errors so that I could make things right. I explained how

**“If local prosecutors are using drug forfeiture proceeds to purchase or lease expensive cars for general office purposes — rather than to combat drug crime and strictly enforce the state's Controlled Substances Drug Act — the Pennsylvania Legislature should promptly convene oversight hearings on the use of such funds.”**

LOUIS RULLI

UNIVERSITY OF PENNSYLVANIA LAW PROFESSOR





# ‘DA ON CALL 24/7’

Brett Hambright, a media specialist for the Lancaster County District Attorney’s Office, provided the following statement about the lease and use of a 2016 Toyota Highlander by Craig Stedman. The office has declined to provide a copy of the lease.



Brett Hambright

*I request this statement not be cherry-picked but rather provided in its entirety to give full context, which is required — but not expected considering LNP’s current publication trend — in any informative news story:*

*Anyone who feels we should use taxpayer dollars instead of drug dealer assets to fight crime does a disservice to Lancaster County taxpayers.*

*Forfeiture funds are governed by a strict set of rules, established by the state legislature, to provide oversight by independent agencies of the usage of those funds.*

*Specifically, all the county’s forfeiture expenses are annually audited by the Lancaster County Controller’s Office and the Attorney General and they have found every single forfeiture expense by this office to have been in compliance with the law every single year.*

*As chief law enforcement officer of the county, the District Attorney is on call 24/7; incidents requiring the DA can take place at any time on any day. This includes calls to crime scenes, police stations and other various locations in the middle of the night, on weekends, and holidays. The DA must always be available to respond regardless of whether these incidents happen during or outside of what most people would define as normal work hours.*

*The DA directly oversees and commands the Lancaster County Drug Task Force as part of his duties each day of the week.*

*Additionally, every single day the DA supervises enforcement of all drug crimes and the vast array of numerous crimes that are related to and/or driven by drugs in the county, to include DUIs and violent crimes. It would be myopic to assume the DA will have one specific task, event or duty for each day. That said, we still find a nexus to drug-related behaviors, crimes and trends regarding the topics outlined in LNP’s event-specific inquiries.*

*For example, LNP cites DUI events: more than a third of DUIs in this county involve drug impairment. Regarding Sentencing Commission meetings: if LNP is not aware of this group’s function, the commission sets guidelines for all crimes for use by sentencing judges in Pennsylvania criminal courts. Regarding animal-cruelty law and Marsy’s Law events: law enforcement would be naïve to believe drug use/addiction does not play roles in domestic-abuse crimes — those against another person or a pet.*

*Not unlike other DAs in Pennsylvania and the nation, the Lancaster County DA has access to a work vehicle. Many DAs and members of law enforcement have taxpayer-funded work vehicles. The DA here does not and has never requested a taxpayer funded vehicle. Some other DAs have work vehicles not funded by taxpayer dollars but rather through forfeiture funds. Either situation is entirely legitimate and appropriate given the duties of the office.*

*This is a smart practice that is followed across Pennsylvania and the nation; it is far from unique.*

*We encourage you to contact the PDAA to confirm the legitimacy of use as well as the Lancaster County Controller’s office to confirm complete compliance with the law in every audit.*

the error was made, to include the fact that I used multiple cars as well as the work vehicle.”

He said the matter has been resolved as the “overpayments were rectified, and the county made whole.”

## ‘ON CALL 24/7’

LNP obtained details of Stedman’s lease and travel in the Toyota SUV using Stedman’s expense reports from the county controller’s office, parking records from the Harrisburg Parking Authority and vehicle information from Carfax.

Controller’s office records show Stedman spent \$21,373.32 in drug forfeiture proceeds between January 2016 and November 2018 on the lease, security deposit, registration and inspection of the vehicle. That figure includes a \$10,000 initial payment, \$1,950 security deposit and recurring monthly payments of nearly \$300 for the Highlander, which has a sticker price of about \$30,000.

Stedman, who is paid \$179,299 a year, also was reimbursed \$71.16 from the forfeiture account for a state inspection in December 2017 and \$26.45 from the county’s general fund for a tire repair in January 2018, the records show.

The district attorney, through the office spokesman, defended the lease by pointing out it is paid for directly out of the forfeiture account and not out of the department’s general fund or other taxpayer-funded account.

He also stated that most of the crimes Stedman prosecutes — from DUI to domestic abuse — are related to drug activity in some way, and therefore his spending of forfeiture money on a vehicle to perform his duties is permissible under state law.

“As chief law enforcement officer of the county, the District Attorney is on call 24/7; inci-

dents requiring the DA can take place at any time on any day,” Hambright said in a written response to specific questions from LNP.

“This includes calls to crime scenes, police stations and other various locations in the middle of the night, on weekends and holidays. The DA must always be available to respond regardless of whether these incidents happen during or outside of what most people would define as normal work hours,” Hambright said.

Bruce Antkowiak, a law professor at St. Vincent College in Latrobe, said he believes the forfeiture statute allows prosecutors flexibility in the use of the proceeds, as long as they are not used for personal or political expenses.

“The provisions here are general and without a prohibitive clause attached to it,” Antkowiak said. “The question is does the district attorney have discretion to use these funds for the advancement of the office?”

“This is really going to be a question of how

much discretion the courts are going to afford district attorneys offices,” he said.

Stedman is the only row officer in Lancaster County in modern history to lease a vehicle for official use, said Larry George, chief clerk to the county commissioners. None of the three commissioners do, either.

“There is a standard procedure in place for County departments when a department needs to procure a vehicle. It involves going through the County Purchasing Department. That apparently was not done here,” the board wrote. “According to County Code, which is the governing law in this case, the Board of Commissioners is the contracting authority for all contracts entered into by County entities. This includes County elected row offices. Therefore, any contract not approved by the Board, including a vehicle lease, is improper.”

Berks County District Attorney John T. Adams said he drives a vehicle paid for out of his county’s fund, a practice he described as acceptable because he is on call around the clock and estimates that 95 percent of crime relates to drug offenses.

Greg Rowe, interim executive director of the Pennsylvania District Attorneys Association — where Stedman is a member of the executive committee — said it is not uncommon for a county’s top prosecutor to be provided a vehicle, regardless of how the expense is covered.

“It is important to note that, unfortunately, controlled substances are connected to the vast majority of criminal matters that arise,” Rowe said. “We are aware of district attorneys using forfeiture to support vehicles for official business, such as by using proceeds to pay for the vehicles or by using the forfeited vehicle themselves; in other instances, counties pay for vehicles for official business through the general fund or provide reimbursement for mileage.”

In Allegheny and Dauphin counties, the district attorneys drive cars that are paid for out of general operating budgets and not with forfeiture proceeds, officials said.

In Philadelphia, prosecutors drive vehicles



## FORFEITURE FIGHT: A TIMELINE OF ONE NEWSPAPER’S WORK

LNP and LancasterOnline have been for months seeking access to how the district attorney in Lancaster County is spending the proceeds of civil-asset forfeiture. Despite an Office of Open Records ruling in its favor, the newspaper has been blocked in its efforts.

**SEPT. 11, 2018**  
LNP files request for the district attorney’s drug assets forfeiture records.





The provisions here are general and without a prohibitive clause attached to it. The question is does the district attorney have discretion to use these funds for the advancement of the office? This is really going to be a question of how much discretion the courts are going to afford district attorneys offices.”

BRUCE ANTKOWIAK  
ST. VINCENT COLLEGE LAW PROFESSOR

from a city-maintained fleet, a change prompted by District Attorney Larry Krasner. Prior to his election, the office’s prosecutors drove cars seized from drug dealers.

“Just because it’s done widely doesn’t mean it’s a best practice,” said Ben Waxman, a spokesman for Krasner’s office.

‘FUNDING CRISIS’

Civil asset forfeiture — also called drug forfeiture — allows police to seize cash, vehicles and property used, or suspected to have been used, in drug sales or purchased with proceeds from drug sales. The proceeds from forfeited property fluctuate every year and are used to fund the drug task force here.

To supplement drug forfeiture proceeds, the district attorney has been seeking larger and more permanent contributions from taxpayers in Lancaster County.

“The Lancaster County Drug Task Force — which targets mid- to upper-level dealers and monitors trends in trafficking and drugs of choice — is likely facing a funding crisis in the very near future,” the district attorney’s office said in November.

District attorney’s office spokesman Hambright defended the use of drug forfeiture money to pay for a car lease at the same time the district attorney has been seeking more taxpayer money for the drug task force.

“What am I missing here??” Hambright wrote in an email. “The point of the November post (and plea to the [Board of Commissioners]) is that the DTF needs a sustainable funding stream. The taxpayer already in part supports via the municipal contributions. We called on the BOC to provide some directive (w/ the munis) in establishing something permanently sustainable ... What does a \$3K/yr expense from drug dealer assets have to do with that??”

NO LEGISLATIVE REMEDIES FOR ISSUE ON THE HORIZON

» SAM JANESCH

Pennsylvania’s civil asset forfeiture law underwent a makeover — albeit a light one — in June 2017.

It had been a top priority of both Republicans and Democrats at a time when the state was ranked 41st in the nation for its asset forfeiture laws by the Institute for Justice.

The Arlington, Virginia-based nonprofit gave Pennsylvania a “D-” because of its “low bar” for forfeiture without any conviction required, its “poor protections for innocent third-party property owners” and for 100 percent of forfeiture proceeds going to law enforcement.

Act 13 of 2017, sponsored by Sen. Mike Folmer, R-Lebanon, increased the standard of proof and shifted the burden of proof from property owners to the government. Proponents who had wanted to see the whole system overhauled — particularly by requiring a conviction before the seizure of assets — were disappointed.

The first part of Gov. Tom Wolf’s statement when he signed the bill wasn’t about what the bill did, but what it didn’t do: “expand the role of a criminal conviction in asset forfeiture.”

Two years later, the issue has largely fallen out of sight in the Capitol, with no other reform bills being seriously discussed.

A few forfeiture-related bills have been introduced or re-introduced at the start of the new 2019-20 session. A bill from Philadelphia Democratic Sen. Sharif Street would require counsel to be provided if someone whose property was seized can’t afford an attorney. One from Rep. Kerry Benninghoff, a Centre County Republican, would direct drug forfeiture money to school safety projects.

None of the bills filed so far address the lack of transparency that contributed to not only the Institute for Justice’s failing grade, but numerous legal battles as members of the public and the media push district attorneys to share how they’re spending the seized money.

The money to lease Stedman’s SUV comes directly from the drug task force’s primary source of revenue. In 2016-17, forfeiture income totaled nearly \$642,000.

In 2018, Lancaster County municipalities contributed \$448,000 in taxpayer money to the drug task force, records show. The attorney general’s office contributes \$193,000 a year. And county commissioners allocate \$100,000.

Stedman has said \$100,000 is not enough funding from the county, especially if law enforcement’s ability to seize assets — the subject of debate in courts across the country — goes away.

Last month, the U.S. Supreme Court unanimously curtailed state and local authorities’ power to seize property, saying it violates the constitutional protection against excessive fines.

Rulli, the law professor and expert on civil asset forfeiture, said there is growing concern about the practice because of limited “accountability, transparency, or public scrutiny.”

“While the Pennsylvania legislature has mandated that all forfeiture proceeds be used for the enforcement of the state’s Controlled Substances Drug Act, there is a real question as to whether forfeiture funds are being used as a general funding stream for local prosecutor offices,” Rulli said.

“The leasing of a brand-new and expensive vehicle by a county district attorney, paid with forfeiture funds and used for trips to Harrisburg to attend bill signings, continuing legal education seminars and trade association meetings, if true, raises serious concerns about the improper use of such funds,” Rulli said. “The attorney general should promptly scrutinize expenditures like these to see if they violate the law.”

Carter Walker covers county government and politics for LNP and LancasterOnline in Lancaster County. He can be reached at cwalker@lnpnews.com. @

FORFEITURE OF ASSETS: WHAT PA LAW SAYS

Use of cash or proceeds of property.

» Cash or proceeds of property ... shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The funds shall be maintained in an account or accounts separate from other revenues of the office. The entity having budgetary control shall not anticipate future forfeitures or proceeds from future forfeitures in adoption and approval of the budget for the district attorney.

Authorization to utilize property.

» Cash or proceeds of property subject to forfeiture ... shall be utilized by the district attorney or Attorney General for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. In appropriate cases, the district attorney and the Attorney General may designate proceeds from the forfeited property to be utilized by community-based drug and crime-fighting programs and for relocation and protection of witnesses in criminal cases. Real property may be transferred to a nonprofit organization to alleviate blight resulting from violations of The Controlled Substance, Drug, Device and Cosmetic Act.

OCT. 18, 2018

District attorney denies records request.

NOV. 6, 2018

LNP appeals to state Office of Open Records.

JAN. 7, 2019

Office of Open Records rules in favor of LNP, grants access to records.

FEB. 6, 2019

DA appeals to Court of Common Pleas, arguing that the law shields expenditure records from disclosure.

FEB. 28, 2019

County commissioners seek to intervene.

MARCH 1, 2019

District attorney files motion to block the commissioners from intervening.





# FOURTH TIME'S A CHARM?



BLAINE SHAHAN | FOR THE CAUCUS

## Sen. John Blake on his repeated efforts to make state government more transparent through the Right-to-Know Law

» PAULA KNUDSEN + SAM JANESCH

**Editor's note:** This is the third annual Sunshine Week edition of *The Caucus*. Sunshine Week is an annual celebration of access to public information promoted by the American Society of News Editors and Reporters Committee for Freedom of the Press.

Here at *The Caucus*, we are superfans of public access laws that allow the public to participate in a government of the people and by the people. We use public databases and court documents as foundational components of our

Ten years ago, when the Office of Open Records was in its infancy, John Blake was an executive deputy secretary at the Department of Community and Economic Development. Blake helped get the office, then under the DCED, up and running, bringing Pennsylvania out of what he called the “stone age” and into a new era of transparency.

In 2011, when the Lackawanna County resident was elected to the Senate, he had a chance to fix what he saw as fundamental flaws in the 2008 law.

He championed reforms to expand the law to more fully cover state-related universities. And, when the bill's original sponsor left office, Blake took on the entire laundry list of proposed amendments to the Right-to-Know Law — measures including requiring campus police departments to be treated like other municipal forces and requiring records to be provided in digital formats if possible.

For state-related universities — Penn State, Pittsburgh, Temple and Lincoln — Blake's proposals would increase the amount of salary information available for inspection by the public. They also would allow the public to inspect those records in a database.

The Democratic senator's bills have come up short for three consecutive legislative sessions. He recently sat down with *The Caucus* in his Capitol office to talk about the story behind them and why there might be renewed hope in the 2019-20 session.

**THE CAUCUS:** You have been a longtime proponent of Right-to-Know Law amendments. Can you tell us what you are thinking about for this session?

**BLAKE:** I think it's best I give you some context. It really goes back prior to my arrival here in the General Assembly, because you may recall that during the (Gov. Ed) Rendell administration, Sen. Dominic Pileggi had shepherded through the first real change relative to the state's relationship with its citizens regarding Right to Know and open records.

The statute that was originally signed by Gov. Rendell at that time posited the Open Records Office at the Pennsylvania Department of Community and Economic Development. So at the time, I was executive deputy secretary of the department under then-Secretary Dennis Yablonsky, and it kind of fell to me to implement the statute, and that really meant everything from scratch — the hiring of Terry Mutchler as the first open-records officer, setting up the office in the Keystone Building and going through the budgetary process, because the original budget for the open records office was embedded in the DCED budget.

**THE CAUCUS:** We're 10 years out. What was the budget at the beginning? Less than \$1 million?

**BLAKE:** Yes, it was small and insofar as it was startup money. Terry Mutchler was wonderful, and I get along very well with her successor, Erik Arneson, because Erik was on Sen. Pileggi's staff, so he also had some history, if you will, in this subject area. So the long and short of it is we were very incremental, very methodical, relative to the hiring of skilled professionals who could adequately fulfill the requirements of the statute. But it was more important, because every single decision that they made and every single court case that occurred around the state began to set precedent for open records in Pennsylvania. So I'm really proud of the work that Terry and that Erik have done in leading that office.

But if you go back three legislative sessions — I'm

reporting. And we file a lot of Right-to-Know Law requests.

We've heard that our Right-to-Know Law requests ruffle some feathers in certain government quarters. Hey, sorry about that. But it's taxpayer money, taxpayer offices, taxpayer personnel that we're asking about.

Ten years ago, the Office of Open Records got underway handling appeals under a newly-revamped Right-to-Know Law, a law that flipped the presumption of access in favor of the public.





## THE INTERVIEW

thinking it would have been 2013-14 — Sen. Pileggi had decided that it was time to take some learning from around the state and to maybe update or refine the open-records law. And it was appropriate as the original author of the bill that he would be the one to steward it here, and at the time he was majority leader of the Republican Senate Caucus. And at the same time, you'll recall, we had the tragedy at Penn State, which was a serious crisis that warranted a tremendous amount of public attention.

**THE CAUCUS:** Jerry Sandusky.

**BLAKE:** That's correct. And so when I was in the midst of that as a lawmaker, I began to realize that there were some issues that differentiated Penn State and their sister state-related universities from state agencies incidental to public access to information. It's not like they weren't required to report everything. It's just that it was all over the place. The feds required this, sometimes the state required that. And my original thought, which I backed away from, was that why weren't they state agencies, given the amount of appropriations they get? And there are a lot of really good reasons why they're not. One, the two-thirds majority vote of nonpreferred appropriations. Two, their legal history is very, very distinguished. It's unique and it's very important.

**THE CAUCUS:** As a land grant university?

**BLAKE:** As a land grant university. But the third issue was the most compelling to me. If they were state agencies, they'd have sovereign immunity, and what would be the recourse for the victims if that were true? So I backed away from that idea. I remember having a meeting with Sen. (Jake) Corman at that time, indicating that I was going to take up a bill regarding what I would call the Right-to-Know application to the state-related universities, but I was going to back away from any issues that related to them as state agencies.

And so I began going down this road to put this legislation together as it related to Pitt, Penn State, Lincoln and Temple. A little bit less so with Lincoln, because they are small scale in comparison to the other three, but we still had contact with Sen. (Andy) Dinniman, and Lincoln is in his district. And we basically had a lot of direct dialog with the universities, and they had a lot of dialog with each other. And it turned out that we were able to build a good piece of legislation that would allow the public access to information in a way that was easier, that was online, that was consolidated and that would bring them more into the public view, if you will, given the level of appropriations. And we give them close to a half a billion dollars a year — actually a little bit more than that now. And they were very good, because they wanted to get this cleaned up. They wanted to get things easier for people to know.

**THE CAUCUS:** Is this still back in the 2013-14 session?

**BLAKE:** That's correct. I was on this path with the state-relateds, and Sen. Pileggi was on this path with updating the Right-to-Know Law. And he called me to his office one day and he said, "They are both the same thing. Let's wire them together, make it one bill." Which we did.

And these particular initiatives have gone off the floor of the Senate 50-0 in



BLAINE SHAHAN | FOR THE CAUCUS

**We were in the stone age in Pennsylvania before Sen. Pileggi shepherded this through during the Rendell years. ... Prior to the Pennsylvania open-records law that was signed by Gov. Rendell, the burden of proof as to what was public was on the citizenry — not on the government or the government agencies, which is upside down. The moment this bill became law, it turned everything around, and it said the burden on what is not public is now on the government agency, and everything else is."**

**SEN. JOHN BLAKE**

ON PENNSYLVANIA'S RIGHT-TO-KNOW LAW

three legislative sessions. We are in constant contact with Erik Arneson. We've had a lot of contact with the Pennsylvania NewsMedia Association. They've been in my office on several occasions with commentary about what they think is a shortcoming in the law and that maybe updates should be made.

And then, of course, Sen. Pileggi left the Senate. ... So, when Sen. (Tom) Kilion came in, because he was actually the successor to that district, I talked to him, and I said "Do you want to take this up?" And he said, "No, I'm new here. No, senator, you know a lot more about it. You own it." So he deferred to me, and so here I am, in the fourth legislative session, and I feel ownership of both the prior work of Sen. Pileggi, the work we've done in the interim with the NewsMedia Association, the work we've done in the interim with Erik Arneson

at Open Records and the work that I had already built with respect to the four state-relateds.

**THE CAUCUS:** In this fourth legislative session, trying to do it again, do you feel that there's urgency among your colleagues in the Senate, or do you think this kind of falls by the wayside?

**BLAKE:** The only thing I will tell you is that there is bipartisan willingness for these reforms to actually be effectuated into law. That is evidenced by the three votes that were taken that were unanimous in the chamber. And, unfortunately, when it went over to the House, it got referred to the State Government Committee, and at the time that committee was headed up by Rep. (Daryl) Metcalfe, and I think the representative had his own ideas about what should be done in Pennsylvania with respect to Right-to-

Know and open records. It never got to a floor vote.

**THE CAUCUS:** And now there's different leadership in that committee?

**BLAKE:** That's correct. And there are other allies that I'm gaining in the House Republican Caucus that I think want to help me shepherd this through, finally get it through this legislative session.

**THE CAUCUS:** What do you want to tell our readers about the public policy reasons for ensuring that records and financial transactions involving taxpayer money should be public?

**BLAKE:** We were in the stone age in Pennsylvania before Sen. Pileggi shepherded this through during the Rendell years. And I think this is the most important thing that I learned. Prior to the Pennsylvania open-records law that was signed by Gov. Rendell, the burden of proof as to what was public was on the citizenry — not on the government or the government agencies, which is upside down. The moment this bill became law, it turned everything around, and it said the burden on what is not public is now on the government agency, and everything else is. OK? Granted there are some legal provisions, and they were included in the original statute. And if you talk to Terry or Erik, they'll tell you those things are really important, because they involved privacy issues and litigation and constitutional issues that had to be protected.

But everything else that the taxpayers pay for, they should know about. And it ought not to be hard for them to know. And that's what this is about.

**THE CAUCUS:** Our newspaper and other outlets cover the state Legislature. One of the frustrations we've had is that the records of the Legislature are not open in the same way as the records of other agencies. Is there any thought down the road to expanding the definition of a "legislative record?"

**BLAKE:** I've had this discussion. We've talked with our legal folks. It gets a little bit testy relative to the separation of powers in the constitution, and the distinction between executive agencies and legislative agencies. I think our campaign finance reports ought to be all electronic and instantaneously available to the people of Pennsylvania. I always file electronically, and I think everybody should be required to, but it's not the current law.

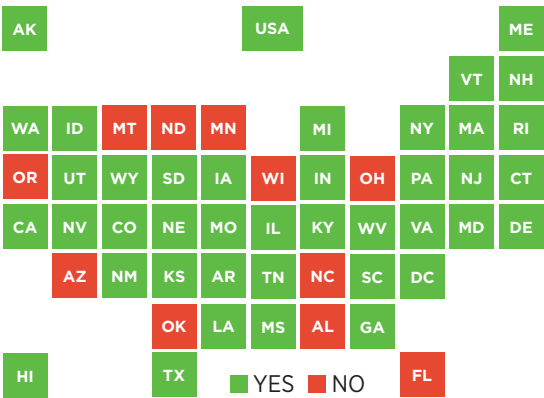
**THE CAUCUS:** What's your timing on the Right-to-Know Law legislation?

**BLAKE:** First thing that I want to do is engender some support from the majority caucus in the House. There are still some things that Erik Arneson might ask for in the language. There might still be some additional input from the NewsMedia Association; I'm not sure if we've exhausted all of our communication with them. So I guess what I'm saying is we have our current printer number that went off the Senate floor 50-0 in the last legislative session, so we're going to start with that language, which already has bipartisan support here. What I would really like is someone from the Republican caucus in the House to put up a companion bill. Let it come from over there. I don't have pride of authorship here. I'd kind of like to see it get to the end zone and get the governor's signature on it. ☺



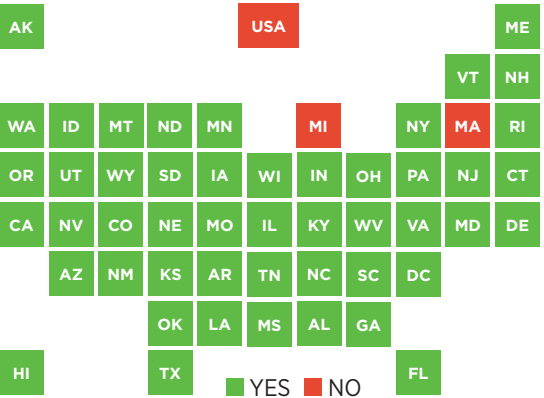


# How open is your government?



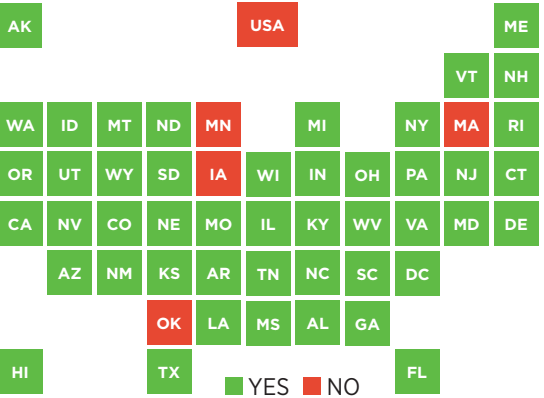
## IS THERE A FIXED TIME IN WHICH THE AGENCY NEEDS TO RESPOND?

Most states specify a number of days that its governments have to respond to a public-records request. While these deadlines often are missed, this element of the law is useful for reminding agencies that a legal clock is ticking. Some states interpret these deadlines as the deadline for an initial response, while others use it as a deadline for a final response, often with the ability to extend the deadline for complex requests.



## DO PUBLIC-RECORD LAWS APPLY TO THE EXECUTIVE BRANCH?

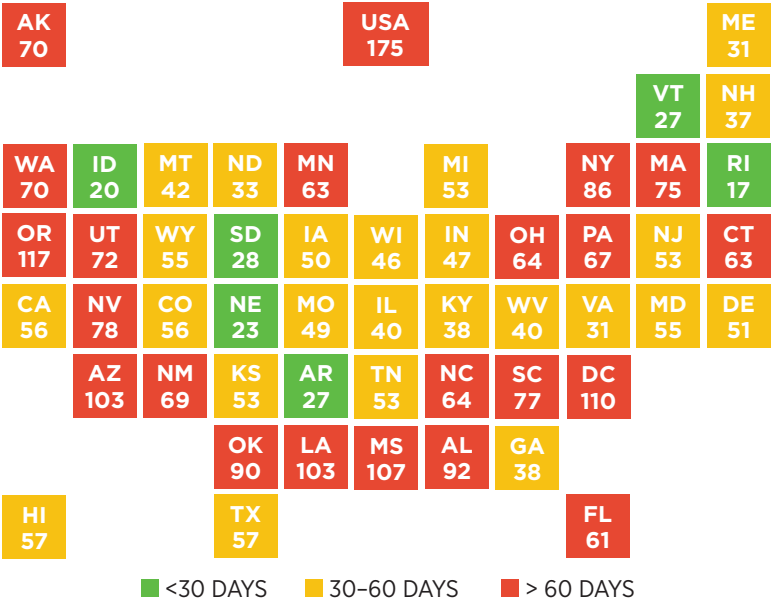
In almost every state, public records laws apply to the governor's office, although many states offer special carve-outs for the executive. At the federal level, while the White House is exempt from the Freedom of Information Act, it is subject to the Presidential Records Act, which allows disclosure of some records five years after the president leaves office.



## DO PUBLIC-RECORD LAWS APPLY TO THE LEGISLATIVE BRANCH?

While many states offer some access to legislative records, that can vary widely. In some cases, only administrative records are subject to disclosure, while other states allow broad access to communications with constituents and other records.

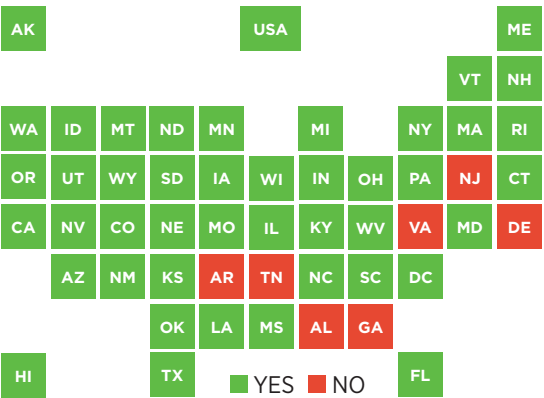
Each state has its own laws about making documents, data and other records accessible to the public. There also are separate public records laws for the federal agencies, the District of Columbia, and territories such as Guam, Puerto Rico and the Virgin Islands. MuckRock tracks how states impose exemptions that allow them to withhold records, how quickly each state responds and other factors affecting government transparency. The data here is drawn from MuckRock's database and from work by Miranda Spivack, an independent journalist, who developed data on open government in collaboration with the Milwaukee Journal Sentinel, students at Marquette University's Diederich College of Communication and Reveal from The Center for Investigative Reporting.



## AVERAGE RESPONSE TIME

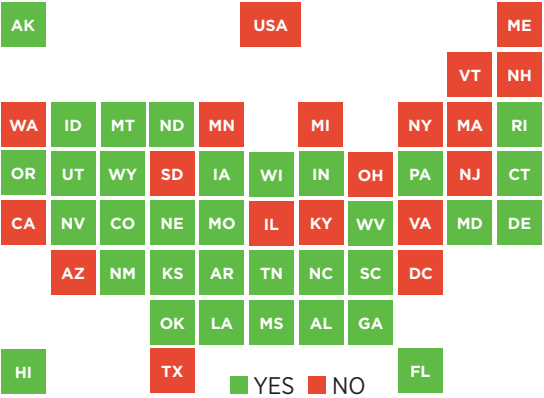
Governments fulfilling requests for public records have a reputation for being slow, but how slow can vary widely based on state, agency, and the complexity of the request. Above is the average number of days for agencies to complete requests, updated in real time based on requests filed and tracked through MuckRock. Note that these are mean averages — a few outliers can make a big difference in states with fewer requests. States in green are the fastest at under 30 days; agencies in yellow respond, on average, within 30 to 60 days; and red agencies take more than 60 days to respond.

Michael Andre, Gurman Bhatia, JPat Brown, Jabril Faraj, Maddy Kennedy, Mitchell Kotler, Beryl Lipton, Edgar Mendez, Michael Morisy, Devi Shastri, Theresa Soley, Miranda Spivack and Curtis Waltman contributed to the research, fact checking, design and implementation of this database. For any updates, additions or corrections, please send an email to [info@muckrock.com](mailto:info@muckrock.com). It was funded in part by the Fund for Investigative Journalism, Marquette's O'Brien Fellowship in Public Service Journalism and the Arnold Foundation.



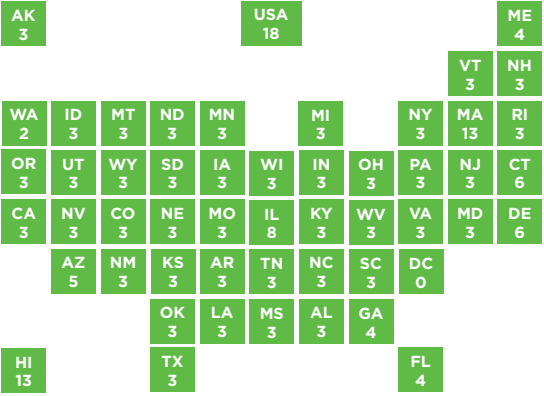
## WHICH STATES ALLOW BLOCKING OUT-OF-STATE REQUESTORS?

Citing the Supreme Court precedent *McBurney v. Young*, a number of states can block requests from out of staters. Many agencies in these states do continue to process requests from nonresidents. The citizenship requirement can be an additional barrier to access, even for resident requesters who might prefer to maintain their privacy or who don't have access to identification.



## DO PUBLIC-RECORD LAWS APPLY TO THE JUDICIARY?

Often courts are exempt from traditional public records laws, and instead provide access to legal filings and other judicial records via their own access rules and systems. Even in those states where the judiciary is subject to public records requests, there are often wide exemptions for judges' own records.



## HOW MANY EXEMPTIONS ARE IN MUCKROCK'S DATABASE FOR EACH JURISDICTION?

MuckRock has a growing database of public records exemptions, details on how they should and should not be applied, and sample language to craft an appeal. This database is not comprehensive. A jurisdiction may have more exemptions than are actually written into law.





# Let the sunshine on forfeiture

## The case for opening up civil-asset records across the US



» JENNIFER MCDONALD

In 2014, police showed up at Cristos and Markela Sourovelis’ doorstep, forced them to leave their home and said they had to go to court in order to be allowed back in. Astonishingly, the Philadelphia district attorney’s office argued the home was the instrument of a crime because the Sourovelis’ son had been arrested a few weeks prior for selling \$40 worth of drugs.

Cristos, Markela and the rest of their family members were never accused of any wrongdoing but were still threatened with homelessness.

Seizing and attempting to keep the Sourovelis’ home was entirely legal thanks to a little-known policy called civil forfeiture, which allows law enforcement to permanently take your property without ever charging you with a crime.

Pennsylvania law allows police and prosecutors to forfeit property if they demonstrate it is more likely than not connected to some sort of criminal activity. To win it back, property owners must prove their own innocence in court. Even worse, law enforcement gets to keep 100 percent of the proceeds from what they take, providing a perverse incentive to police for profit.

Incredibly, civil forfeiture happens largely in the dark. While counties’ forfeiture funds are subject to an annual audit, those audits are explicitly exempted from disclosure under Pennsylvania’s Right-to-Know Law.

### HIDDEN FROM VIEW

The only information about forfeiture the public receives is through annual reports from the state Attorney General’s Office, which provide only basic, topline accounts of what pros-

ecutors are forfeiting and how they’re spending the proceeds.

These reports tell us, for example, that Pennsylvania agencies forfeited over \$12 million worth of currency and property in fiscal year 2016 and spent more than \$1.7 million of that money on law enforcement salaries. They don’t, however, give us any details about individual seizures or forfeitures, such as the value of each piece of property, whether criminal charges were filed against the property owner, or even when and where the property was seized.

There also is no enforcement mechanism to punish counties that do not comply with the reporting requirements. On top of that, the attorney general’s reports are not easily accessible by the public; one must file a Right-to-Know Law request just to access this fairly basic information.

### ROLE OF THE MEDIA

The most enlightening facts about Philadelphia’s civil forfeiture practices came from a journalistic investigation that combed through individual case files for forfeited property. That investigation examined more than 100 cases from 2011 and 2012 and discovered that the median amount forfeited was just \$178.

In fact, the reporting found that in many of these cases, the Philadelphia district attorney sued to seize amounts less than \$100.

Seizing \$100 in cash isn’t exactly going after the cartels and kingpins that forfeiture proponents claim are the intended targets of civil forfeiture.

Instead, it treats innocent citizens like ATMs.

Given the inherent constitutional issues baked into laws that allow law enforcement to self-fund outside the normal appropriations process — often on the backs of innocent property owners — it is unacceptable that so little information is available about the practice.

Pennsylvania can and should enact legislation to require more details to be reported about seizures and forfeitures, to impose a penalty when district attorneys fail to file their required reports, and make all forfeiture records easily accessible online.

The data from these reports will then allow policymakers to focus their reform efforts on the most egregious instances of abuse.

Cristos and Markela Sourovelis ultimately got their home back and filed a successful class-action lawsuit against Philadelphia’s unconstitutional abuse of its power to seize and forfeit, but innocent Pennsylvanians are still at risk.

And although improved transparency cannot fix the fundamental problems with civil forfeiture — namely, the property-rights abuses it permits and the temptation it creates to police for profit — it is still vitally important for identifying and targeting reform efforts.

Let’s take the opportunity this Sunshine Week to shine a light on civil forfeiture.

Sunlight is, after all, the best disinfectant. ☺

Jennifer McDonald is a senior research analyst at the non-profit Institute for Justice in Arlington, Virginia, and co-author of “Forfeiture Transparency & Accountability: State-by-State and Federal Report Cards.” A lawyer with the institute argued *Timbs v. Indiana* before the U.S. Supreme Court earlier this year. The court ruled that the U.S. Constitution’s protection against excessive fines applies fully to the states, a finding that sharply curtails state and local authorities’ power to seize residents’ property.





OVERHEARD ON 3RD

# WINS AND LOSSES

... and redactions, court challenges and nonresponses

» PAULA KNUDSEN + SAM JANESCH

**A**lan S. Krug is a transparency success story and, simultaneously, a transparency failure. In the past year, Krug, 85, has filed nine Right-to-Know Law requests. The State College-based economics and public-policy consultant had never used the state's public-records law before 2018.

But his son's termination from Bloomsburg University — a firing the son has alleged in federal court was improper and in retaliation for his assisting two women in filing sexual harassment claims — sparked Krug's interest in the inner-workings of some of Pennsylvania's state-funded institutions of higher learning.

He filed public-records requests with Kutztown University, Bloomsburg University and the Pennsylvania State System of Higher Education.

For his first request, Krug used the U.S. Postal Service to send identical requests to Kutztown and PASSHE.

"Kutztown responded very rapidly and gave me what I wanted," he said. "I never heard anything from PASSHE about what I wanted."

Krug appealed to the Office of Open Records, and officials from the state system said they never received Krug's request. He ended up winning four final determinations from the Office of Open Records but says that PASSHE and Bloomsburg have "simply ignored" the determinations, leaving Krug with a choice: press forward in court to try to get the records or give up.

Krug has not yet gone to court to try to compel the agencies to turn over the records. He thinks most public requesters in his place should not have to resort to litigation.

Krug said it is "beyond the ken of most people to go to court," referring to the expense and needed expertise of litigation. "The average citizen can't do it," he said.

Krug said he believes the public-records law needs an adjustment.

"Why shouldn't the OOR final determination be the final word?" he asked. "People shouldn't have to go to court. It pretty well nullifies the effectiveness of the Right-to-Know Law for most people. That certainly wasn't the intent of the Legislature when they passed the law."

Sen. John Blake, D-Lackawanna County, agrees the law should be updated. Among other changes, Blake plans to introduce legislation that would fine agencies for noncompliance after the Office of Open Records has issued a final determi-

nation.

"There were no penalties for noncompliance," Blake said. "So if a local official or an agency subject to the provisions of the law did not comply with the orders of the Open Records office ... there has to be a consequence to that. So we do put a fine, a daily \$500 fine for noncompliance to incent better behavior and compliance."

## APPELLATE COURT REDACTIONS

The 2018 Sunshine Week edition of The Caucus featured a look at the spending practices of the Pennsylvania Supreme Court. In July, It examined expenditures of the Commonwealth Court. Today's edition rounds out a year-long review of appellate court spending with a recap of Superior Court expenses.

The Superior Court has 14 sitting judges and six senior judges. Superior Court judges are paid nearly \$200,000 a year; the president judge makes more.

Like judges on the other two appellate courts, Superior Court judges' spending often was redacted, with information such as the name and address of restaurants or hotels obscured. Redactions of such information, a court spokesperson previously said, were for security, an assertion backed up by judges.

In July, Commonwealth Court Senior Judge Jim Colins said redactions were "essential" to a judge's safety and defended his taxpayer-supported spending.

"My services are damn cheap for the taxpayer for the amount of work that I produce and the degree of responsibility," said Colins, who charges the state \$600 a month for a leased car. As for taxpayer-funded meals, Colins said: "I don't eat at McDonald's anymore, nor do I think I should."

Colins' meals, as well as the other appellate court judges, were contained in hundreds of pages of spending records obtained by this newspaper that showed reimbursements for hotels, cars, gas, food and more, all with similar redactions.

In between receipts for breakfast buffets and car leases, other expenses for these Superior Court judges popped up, too — with mixed results on how much detailed description was made available for review.

Some documents for car leases showed how much the judges were spending; others didn't. Some airfare receipts — often between Pittsburgh and Philadelphia — showed complete itineraries while others just showed the price.

One email chain provided in the documents showed President Judge Emeritus John T. Bender submitted an invoice for \$75 in the spring of 2017 for a "Medical Marijuana 'Pot'-pourri," which was described as a course held by the Allegheny County Bar Association to discuss the implications of Pennsylvania's new medical marijuana law.

Gabe Roth, executive director of Fix the Court, a national, nonpartisan group that advocates for greater transparency and accountability on the U.S. Supreme Court, said expectations about transparency are very different in 2019 than they were decades ago.

"The public wants to know what their public officials are up to and what state, local and federal officials are paying for," he said.

Roth said that while judges and the administrators who work with them could have legitimate security concerns, threat assessments can help in determining the seriousness of security risk. Judges and administrators should "weigh security versus transparency," he said.

"I do think the public should know which hotels their judges are staying in and which restaurants they're getting comped meals in," Roth said. "But only after the judges have vacated the premises, in order to be mindful of security."

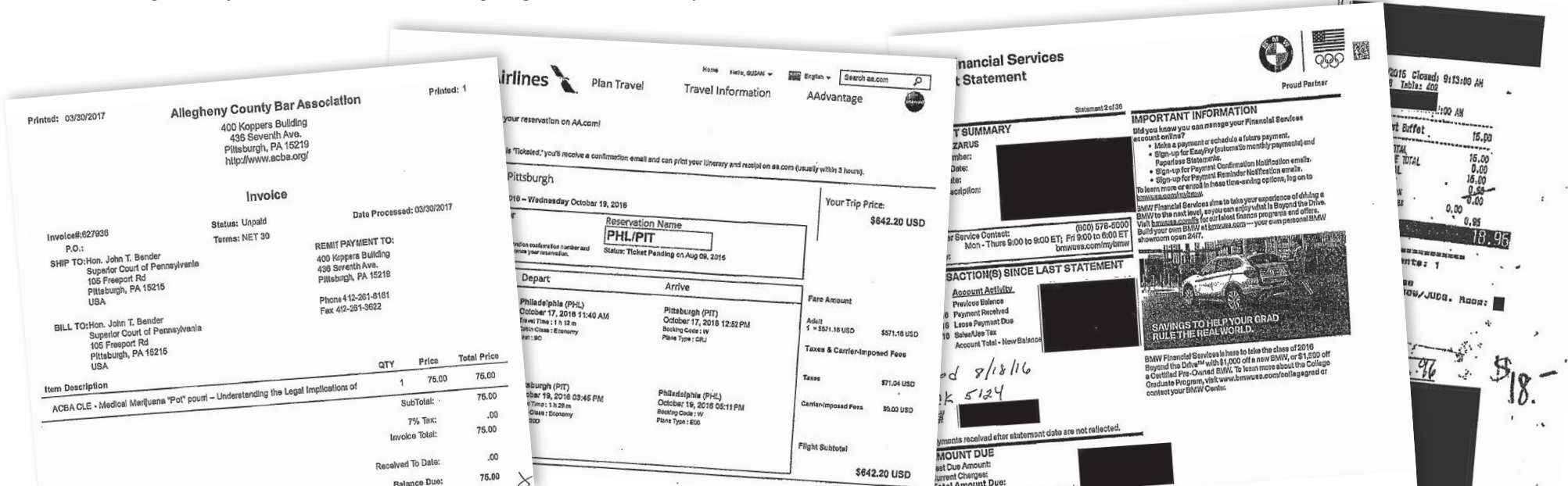
Rep. Seth Grove, R-York County, chairs the newly-formed House Oversight Committee, a committee with the goal of providing more legislative oversight on spending of taxpayer money and the operation of state agencies.

In an interview earlier this year Grove questioned the redactions of judges' expenses. "It's not a security risk about where they stayed," he said. "It's where they're going."

He also questioned why judges were submitting meal expenses, such as lunches, to the state for reimbursement.

"Why expense it?" he asked. "You're going to eat anyway." 🍷

Pennsylvania's 14 sitting Superior Court judges charged taxpayers for car leases, airfare, gas, food and events, according to receipts The Caucus obtained through Right-to-Know Law requests in 2018.







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