

forms

OPEN RECORDS POLICY

pursuant to the
Right to Know Law
(Act 3 of 2008; 65 P.S. §67.101 *et seq.*)

INTRODUCTION:

This policy has been created to assist the public with requesting "public records" and the Local Agency Open Records Officer with complying with such requests. This policy in no way modifies, amends, rescinds or supersedes the record retention policy of the Local Agency established pursuant to law, regulation, policy or other directive.

A. Consistent with statute. It is intended that this policy be consistent with the Right to Know Law, and therefore, anything contained in this policy appearing to be inconsistent or contrary to the Right to Know Law should be read so as to be consistent and in accordance with the Right to Know Law. (See 65 P.S. §§67.504(a); 67.1308)

B. Posting. This policy and the Resolution adopting this policy shall be posted prominently in the municipal building along with the Fee Schedule Resolution; notice of the name, address and telephone number for the Open Records Officer; contact information for the Pennsylvania Office of Open Records; and copies of forms created by the Office of Open Records upon which to make a "public records" request. (See 65 P.S. §67.504(b))

C. Form of "public record"; availability. A "public record" shall be provided in the medium requested if the "public record" exists in that medium; otherwise, the "public record" will be produced in the medium in which it exists. When responding to a request for access, the Local Agency shall not be required to create a "public record" which does not currently exist or to compile, maintain, format or organize a "public record" in a manner in which the Local Agency does not currently compile, maintain, format or organize the "public record." "Public records" shall be available for access during normal business hours. Nothing in this policy shall be construed to require access to any computer either of the Local Agency or the employee of the Local Agency. (See 65 P.S. §§67.701; 67.705)

D. Response time period. The Local Agency will respond within five (5) business days; such response will be one of the following: (1) production of copies/permission to review; (2) a denial; or (3) a request for more time. Failure of the Local Agency to respond within five (5) business days shall be deemed a denial. (See 65 P.S. §67.901)

duplication by a requester as required by the Right to Know Law, the Local Agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by the Right to Know Law. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the Local Agency.

(See 65 P.S. §67.1307)

DEFINITIONS: (See 65 P.S. §67.102)

“Aggregated data.” A tabulation of data which relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.

“Confidential proprietary information.” Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

“Financial record.” Any of the following:

- (1) Any account, voucher or contract dealing with:
 - (i) the receipt or disbursement of funds by an agency; or
 - (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include work papers underlying an audit.

“Homeland security.” Governmental actions designed to prevent, detect, respond to and recover from acts of terrorism, major disasters and other emergencies, whether natural or manmade. The term includes activities relating to the following:

- (1) emergency preparedness and response, including preparedness and response activities by volunteer medical, police, emergency management, hazardous materials and fire personnel;
- (2) intelligence activities;
- (3) critical infrastructure protection;
- (4) border security;

PUBLIC RECORDS OPEN FOR INSPECTION:

A record in the possession of the Local Agency shall be presumed to be a "public record" unless:

- (1) the record is protected by a "privilege";
- (2) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree; or
- (3) the record is on the EXEMPT list contained in this policy.

The burden of proving that a record of the Local Agency is exempt from public access shall be on the Local Agency receiving a request by a preponderance of the evidence.

(See 65 P.S. §§67.305(a); 67.708(a))

RECORDS EXEMPT FROM BEING PUBLIC RECORDS:

The list of records numbered below are exempt and are not defined as being "public records" subject to inspection; however, please note instances where certain records are further defined to be "public records" (**provisions are bolded and underlined**).

In determining whether a record is exempt or is a "public record," the following rules shall apply:

(i) The exemptions set forth below shall not apply to "financial records", except that the Local Agency may redact that portion of a "financial record" protected under subsection (1), (2), (3), (4), (5), (6), (14) or (15). The Local Agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.

(ii) The exemptions set forth below shall not apply to "aggregated data" maintained or received by the Local Agency, except for data protected under (1), (2), (3), (4) or (5).

(iii) In determining whether a record is exempt from access under this section, the Local Agency shall consider and apply each exemption separately.

(1) A record, the disclosure of which:

- (i) would result in the loss of Federal or State funds by the Local Agency or the Commonwealth; or
- (ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

(2) A record maintained by the Local Agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

- (7) The following records relating to an employee of the Local Agency:
- (i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office.
 - (ii) A performance rating or review.
 - (iii) The result of a civil service or similar test administered by the Local Agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by the Local Agency may be disclosed.
 - (iv) The employment application of an individual who is not hired by the Local Agency.
 - (v) Workplace support services program information.
 - (vi) Written criticisms of an employee.
 - (vii) Grievance material, including documents related to discrimination or sexual harassment.
 - (viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of the Local Agency that results in demotion or discharge.
 - (ix) An academic transcript.

(8)(i) A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. **This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.**

(ii) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. **This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.**

(9) The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency.

(10)(i) A record that reflects:

(A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

(B) The strategy to be used to develop or achieve the successful adoption of a budget or regulation.

(ii) Subparagraph (i)(A) shall apply to agencies subject to 65 Pa. C.S. §701 *et seq.* (relating to open meetings; a/k/a The Sunshine Act) in a manner consistent with 65

- (15) A record of the Local Agency relating to a noncriminal investigation, including:
- (i) Complaints submitted to the Local Agency.
 - (ii) Investigative materials, notes, correspondence and reports.
 - (iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L. 1559, No. 169), known as the Whistleblower Law.
 - (iv) A record that includes information made confidential by law.
 - (v) Work papers underlying an audit.
 - (vi) A record that, if disclosed, would do any of the following:
 - (A) Reveal the institution, progress or result of the Local Agency investigation, **except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by the Local Agency or an executed settlement agreement** (unless the agreement is determined to be confidential by a court).
 - (B) Deprive a person of the right to an impartial adjudication.
 - (C) Constitute an unwarranted invasion of privacy.
 - (D) Hinder the Local Agency's ability to secure an administrative or civil sanction.
 - (E) Endanger the life or physical safety of an individual.

- (16)(i) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency.
- (ii) Minutes of an executive session and any record of discussions held in executive session.

- (17)(i) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the Local Agency relative to the following:

- (A) The leasing, acquiring or disposing of real property or an interest in real property.
- (B) The purchase of public supplies or equipment included in the real estate transaction.
- (C) Construction projects.

- (ii) **This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.**

- (18) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of the Local Agency proposal evaluation committees established under 62 Pa.C.S. §513 (relating to competitive sealed proposals).

OPEN RECORDS OFFICER:

The Open Records Officer shall receive requests submitted to the Local Agency under the Right to Know Law, direct requests to other appropriate persons within the Local Agency or to appropriate persons in another agency, track the Local Agency's progress in responding to requests and issue interim and final responses.

Upon receiving a request for a "public record," the Open Records Officer shall do all of the following:

- (1) Note the date of receipt on the written request.
- (2) Compute the day on which the five-business day period will expire and make a notation of that date on the written request.
- (3) Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled. If the request is denied, the written request shall be maintained for 30 days or, if an appeal is filed, until a final determination is issued under section 1101(b) of Act 3 (65 P.S. §67.1101(b)).

(See 65 P.S. §67.502(b))

THIRD-PARTY POSSESSION OF PUBLIC RECORDS:

A "public record" that is not in the possession of the Local Agency but is in the possession of a party with whom the Local Agency has contracted to perform a governmental function on behalf of the Local Agency, and which directly relates to the governmental function and is not exempt under the Right to Know Law, shall be considered a "public record" of the Local Agency. However, nothing shall be construed to require access to any other record of the party in possession of the "public record."

A request for a "public record" in possession of a party other than the Local Agency shall be submitted to the Open Records Officer of the Local Agency. Upon a determination that the record is subject to access under the Right to Know Law, the Open Records Officer shall assess the duplication fee established hereunder and upon collection shall remit the fee to the party in possession of the "public record" if the party duplicated the "public record."

(See 65 P.S. §67.506(d))

REDACTION:

If the Local Agency determines that a "public record" or "financial record" contains information which is subject to access as well as information which is not subject to access, the Local Agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the "public record" or "financial record" and cannot be separated, the Local Agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The Local Agency may not

DENIAL OF REQUEST:

The Local Agency may not deny a requester access to a "public record" due to the intended use of the "public record" by the requester. Access may only be denied as provided for by law. (See 65 P.S. §67.302(b))

If the Local Agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority.
- (3) The typed or printed name, title, business address, business telephone number and signature of the Open Records Officer on whose authority the denial is issued.
- (4) Date of the response.
- (5) The procedure to appeal the denial of access under this act.

(See 65 P.S. §67.903)

APPEAL OF DENIAL:

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records within fifteen (15) business days of the mailing date of the Local Agency's response or within fifteen (15) business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a "public record" or "financial record" and shall address any grounds stated by the Local Agency for delaying or denying the request.

When an appeal is filed, the Office of Open Records shall assign an appeals officer to review the denial. Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the Local Agency within thirty (30) days of receipt of the appeal. If the appeals officer fails to issue a final determination within thirty (30) days, the appeal is deemed denied. Prior to issuing a final determination, a hearing may be conducted. The determination by the appeals officer shall be a final order. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the Local Agency.

A person other than the Local Agency or requester with a direct interest in the record subject to an appeal, within fifteen (15) days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, may file a written request to provide information or to appear before the appeals officer or to file information in support of the requester's or agency's position. Copies of the written request shall be sent to the agency and the requester. The appeals officer may grant a request if:

- (i) no hearing has been held;
- (ii) the appeals officer has not yet issued its order; and
- (iii) the appeals officer believes the information will be probative.

(See 65 P.S. §67.1101)