

RESOLUTION 1204

RESOLUTION by the Board of Supervisors of the Township of Derry, Dauphin County, Pennsylvania, revising the Township’s Open Records Policy for access to public records of the Township;

WHEREAS: Act 3 of 2008 rewrites the state’s Open Records Law to further provide for access to public records, which Act becomes effective January 1, 2009.

WHEREAS: Under the new act, a public record is presumed open unless closed by the law, another statute, or judicial interpretation. The law defines 30 exceptions that are defined in the Township’s policy.

WHEREAS: When a record is denied, the burden of proof is on the Township to show that the record was properly denied.

WHEREAS: Act 3 creates an independent Office of Open Records in the Department of Community and Economic Development to provide information relating to implementation and enforcement of the act; issue advisory opinions; provide training on the act; assign appeals officers; and establish an informal mediation program to resolve disputes. The Office will be required to:

- (1) establish a website with information on the act; 2) establish fees;
- (3) submit an annual report to the Governor and General Assembly;
- (4) establish regulations for appeals; 5) establish a uniform records request form.

NOW, THEREFORE, BE IT RESOLVED that the Supervisors of the Township of Derry, Dauphin County, Pennsylvania, hereby adopts the attached revised policy on access to public records in the Township of Derry.

ADOPTED by the Board of Supervisors of the Township of Derry this ____ day of the month of _____, 2008.

BOARD OF SUPERVISORS
TOWNSHIP OF DERRY
DAUPHIN COUNTY, PENNSYLVANIA

ATTEST:

By: _____
Secretary

By: _____
Chairman

(SEAL)

Township of Derry Open Records Policy

Open Records Law (Act 3 of 2008)

Effective January 1, 2009

A. Requests for Public Records

1. All requests for public records shall be in writing on a Records Request Form (Attachment A, provided by the state Office of Open Records) and shall include the date of the request, the name and address of the requester, and a clear and specific description of the records requested. The request form should be directed to the township department that has custody of the record.
2. Requesters must be legal residents of the United States
3. A Township employee will inform a requestor if the public record is available by publicly accessible electronic means. If the requester is unable to access the record electronically, they should submit a written request for a paper copy to be provided.
4. Public records will be available for inspection and copying at the Township's facilities, Monday through Friday, 8:00 a.m. to 5:00 p.m., with the exception of Township holidays.
5. The Township may not place a limitation on the number of public records which may be requested or made available, or require the requester to disclose the purpose or motive for requesting access to the public record.
6. The Township will attempt to provide the public record in the medium requested. If it's not possible, it will be provided in the medium that the record exists.
7. When an employee believes there is a potential for denial, the request will be immediately forwarded to the Assistant Township Manager, who will serve as the Township's Open Records Manager, 600 Clearwater Road, Hershey, Pennsylvania, 17033, 717-533-2057.

B. Defining a Public Record

A public record is any information regardless of form, documenting a transaction or activity of an agency, is created, received, or retained pursuant to law or in connection with a transaction, business or activity of the agency. It includes documents, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data processed or image-processed document.

All documents are presumed to be a public record unless exempt under Section 708.

C. Exemptions

Law: A record that is protected or considered confidential under a separate, existing law, or under judicial court order or decree.

Privilege: A record that is protected by privilege. (attorney-client, doctor-patient, or recognized by PA court)

1) Loss of Funds: A record that would result in the loss of federal or state funds, or is reasonably likely to result in physical harm to or the personal security of an individual.

2) Public Safety: A record that is reasonably likely to jeopardize or threaten public safety or preparedness, homeland security, or designated classified by a federal or state military authority.

3) Infrastructure Security: A record that is reasonably likely to endanger safety or security of a building, public utility, infrastructure, or information storage system.

4) Computer Security: A record containing information on computer hardware, software and networks, including administrative or technical records, which if disclosed, would jeopardize computer security.

5) Medical Information: A record that contains HIPAA-type records, unemployment compensation records, workers compensation records, or information concerning individual medical, psychological, psychiatric, or disability information.

6) Personal Identifiers: A record that contains personal identifiers including social security number, driver's license number, personal financial information, home, cellular, or personal telephone numbers, personal e-mail addresses, employee number or personal identification number, spouse's name, marital status, beneficiary or dependent information, home address of a law enforcement officer or judge.

7) Employee Records: Employee records including letters of reference, unless relating to appointment to elected office or to Senate confirmation.

Performance reviews.

Civil service test results and local agency results, when restricted by collective bargaining. If not restricted, only the scores of passing individuals.

Employment applications of unsuccessful applicants.

Workplace support services program information

Written criticisms.

Grievance material, including discrimination or sexual harassment.

Discipline, demotion, or discharge information in a personnel file. Reverse exception for "final action of an agency that results in demotion or discharge.

8) Labor Relations: Strategy or negotiations for labor relations, collective bargaining, or arbitration proceedings. Final or executed contract or agreement is open.

9) Legislative Drafts: Draft bills, resolutions, regulations, policy statements, management directives, ordinances, or amendments.

10) Pre-decision Records: Records on deliberations, whether internal or between agencies, whether officials or employees, including contemplated course of action, research, and memos, until the information is presented to a quorum for deliberation. The strategy used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.

11) Trade Secrets: Confidential proprietary information.

12) Aids to Memory: Personal notes and working papers that have no official purpose.

13) Donor Identity: Records disclosing donors to the agency, potential donors, or donor profiles; except when the donation is intended for personal benefit to a named employee or official.

14) Scholarly Information: Unpublished lecture notes, research material, and other scholarly correspondence.

15) Academic Transcripts: Examinations, exam questions, scoring keys or answers to exams relating to the qualifications of an individual.

16) Criminal Investigative Records: A record relating to or resulting in a criminal investigation. The exception is police blotters.

17) Non-criminal Investigative Records: Complaints, investigative materials,

identity of confidential sources, information confidential by law, work papers underlying an audit, and records revealing institution, progress or result of an agency investigation or that would hinder the agency's investigation.

18) 911 Records: 911 recordings and records unless determined by a court to be public interest.

19) DNA Records: DNA and RNA records

20) Autopsy Records: Only the name of the deceased and the cause and manner of death need to be reported.

21) Minutes: Draft minutes and executive session minutes

22) Real Estate Transactions: Real estate appraisals, engineering or feasibility estimates, environmental reviews, relating to lease, acquisition, or disposal of real property, equipment connected with a real estate transaction and construction projects. Information becomes public when a decision is made to proceed with the acquisition, disposal, or construction.

23) Library Records: Library and circulation records of an identifiable individual or group.

24) Library Materials: Library archived and museum materials or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.

25) Archaeological and Species Sites: A record identifying the location of archaeological or endangered or threatened species sites, if not known to the general public.

26) Procurement: Information gathered prior to a bid being awarded.

27) Insurance: A record of communications with insurers, carriers, administrators, or risk management office, except insurance contracts and financial records relating to provision of insurance.

28) Social Services: Records of individuals relating to application for and provision of delineated social services.

29) Legislative Constituent Correspondence: Normal constituent correspondence, except correspondence from registered lobbyists.

30) Minor Child: Records identifying the name, home address or date of birth of a child 17 or under.

D. Response to Record Requests

Township employees will make a good faith effort to provide the requested public records as promptly as feasible.

1. Township employees shall cooperate with those requesting to review and/or duplicate original township documents while taking reasonable measures to protect Township documents from the possibility of theft and/or modification.
2. As soon as possible, but no later than five (5) business days after receiving a written request to access public records, the request will be fulfilled; or the Open Records Manager, or designee, shall respond to the request in accordance with the requirements of the Open Records Law.
3. The Open Records Manager, or designee, will consult the Township Solicitor if it is believed that the requested record or portions of the record may not be public information.
4. The Open Records Manager, or designee, will not create a record that does not exist or put a document into a format that does not exist.
5. If part of a record or document is public and part of it is not, the township may remove portions of a record that are not public information and the Open Records Manager, or designee, will provide a written denial in accordance with Section E, below, for any removed portions of the document. It will be indicated on the record where information is redacted.
6. The Township may use up to 30 additional days if:
 - a. Portions of a record must be removed that are not public;
 - b. The records are not stored onsite and must be retrieved;
 - c. The township requests a legal review of the records requested;
 - d. The township is experiencing a bona fide staffing shortage, or number of records requested requires more time; or
 - e. The requester has not complied with the municipal policies for records access.
 - f. The requester refuses to pay applicable fees.
 - g. The extent or nature of the request precludes a response within the 5-day period.

If the additional days are needed, the municipality will notify the requester of the delay in writing within the first five business days of receiving the request to include the reasons for the delay, the day a response can be expected and an

estimate of the fees.

D. Fees for Copies and Other Media

The Township will utilize the fee schedule established by the DCED Office of Open Records (Attachment B).

The cost of postage will be charged, if mailing is requested.

A maximum of 10 pages will be faxed or e-mailed at no charge. Requests exceeding 10 pages must be picked up or mailed.

Payment must be received in advance for requests that are estimated to be \$100 or more in order for the request to be filled. The Township will review the request and estimate the fees for the requester, and will require a deposit in the amount of the estimated fees, but will refund any excess deposit upon completion of the request.

If additional costs are incurred to comply with any request, other reasonable fees may be assessed. Such cost may be assessed when custodial responsibilities are required during the review of records to assure that the records are not tampered with or removed from the Township's files.

Custodial fees will be charged at 1.2 times the record custodian's normal rate of pay, calculated on an hourly basis, at fifteen (15) minute intervals rounded to the next higher interval.

If the requester fails to retrieve the records within 60 days, the Township may dispose of the records and retain any fees paid.

The Township may waive the fees for duplication of a public record when the Township deems it is in the public interest to do so, or at their discretion.

E. Denial of a Request and Appeals Process

1. The Township will contact the DCED Open Records Office for an advisory opinion.
2. The Township will deny a request for a document if that document is not a public document or when 1) A request is repeated for the same record placing an unreasonable burden on the township. 2) Timely access is not possible due to a disaster. 3) Access would cause damage to historical documents.
3. All denials will be provided in writing, even if only a portion of the document is denied or removed. The written denial must include the following:
 - a. A description of the record,

- b. The specific reasons for the denial, including legal citations and, if applicable, reasons from a legal opinion of why a record is not public,
 - c. The typed or printed name, title, business address, business telephone number, and signature of the township official denying the request,
 - d. The date of the denial, and
 - e. The appeal procedure in Act 3 of 2008 (*Section 1101*)
4. The requester may appeal with the DCED Office of Open Records, or judicial, legislative, or other appeals officer within 15 business days of the mailing date of the agency response or deemed denial in accordance with section 503 (d).

Terry Mutchler, Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225

The appeal must state the reasons the requester asserts that the record is a public record and address the reasons in the agency's denial. The Office of Open Records will assign an appeals officer. The Appeals Officer must make a final written determination, with explanation, within 30 days. Failure to meet that date is a deemed denial. The appeals officer may conduct a hearing on the matter. The determination is a final order, and is sent to both requester and agency.

A district attorney will be designated for appeals regarding access to criminal investigative records.

Dauphin County District Attorney Edward Marsico
Dauphin County Court House, 2nd Fl.
Harrisburg, PA 17101
(717) 780-6767

5. A third party with an interest in the record on appeal may join the appeal within 15 days of receiving actual knowledge of the appeal, but no later than the date the appeals officer issues an order. Participation is by written request to provide information or to appear before the appeals officer, on behalf of either the requester's or the agency's position.
6. Appeals of the appeals officer's determination are filed with the court of common pleas, within 30 days of the mailing date of the decision. The petition for review constitutes a stay on the release of the documents until the court renders a decision.

F. Sanctions

1. If a court reverses the township's final determination, the court may award reasonable attorney fees and costs of litigation or a portion of to the requester if the court finds the following:
 - a. The Township willfully or with wanton disregard deprived the requester of access to a public record.
 - b. The exemptions, exclusions or defenses asserted by the Township in its final determination were not based on a reasonable interpretation of the law.
2. If the court affirms the Township's final determination, the court may award reasonable attorney fees and costs of litigation, or a portion of to the township if the court finds that the legal challenge to the Township's final determination was frivolous.
3. The court may impose penalties and costs in accordance with the applicable rules of the court.

G. Maintenance of Records

1. The Township will follow the Municipal Records Manual provided by the Pennsylvania Historical and Museum Commission Division of Archival and Records Management Services.

