

POLICY TITLE: RIGHT TO KNOW

Effective Date: January 1, 2009

PURPOSE

Paradise Township, a Municipality, is an agency which is covered by the Right to Know Law (Act 3 of 2008), and is authorized to establish a written policy, which must be posted or available to aid in implementation of the Act. This policy replaces any prior policy, as per Resolution 2008- __ and is effective January 1, 2009.

POLICY

The following will provide guidance for Paradise Township Supervisors and employees on how to efficiently and effectively process requests made for public records as governed by Act 3 of 2008.

Section 1. Open Records Officer.

- A. Each year at the first meeting that shall occur in a calendar year, the Board of Supervisors shall appoint an Open Records Officer. This Officer shall be responsible for processing, recording, tracking and otherwise administering all portions of this policy, as well as any policy or procedure that may provide direction for the retention of documents and the destruction of documents of the Municipality.
- B. Municipality shall note the identity and manner of communication to the Open Records Officer on its website and post said information at a conspicuous location at the Municipality office.
- C. In the event an Open Records Request is submitted to an employee other than the Open Records Officer, that person must immediately provide the request to the Open Records Officer. All employees should refrain from accepting Open Records Requests and direct all such requests to the Open Records Officer.
- D. Duties of the Open Records Officer.

1. The Open Records Officer shall receive requests submitted to the agency under this act, direct requests to other appropriate persons within the agency or to appropriate persons in another agency, track the agency's progress in responding to requests and issues interim and final responses under this act.

2. Upon receiving a request for a public record, legislative record or financial record, the Open Records Officer shall do all of the following:

(i) Stamp the date of receipt on the written request.

(ii) Compute the day on which the five-day response period under Section 901 will expire and make a notation of that date on the written request.

(iii) Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled.

(iv) If the request is denied, the written request shall be maintained for 30 days.

(v) If an appeal is filed, keep the records until a final determination is issued under section 1101(b) or the appeal is deemed denied.

(vi) Create a file for the retention of the original request, a copy of the response and a record of written communications with the requester.

Section 2. Public Records.

A. Public Records as defined by the Act shall be provided to any legal resident of the United States, unless otherwise exempted pursuant to the Act.

B. A record shall be defined as a "Public Record" as follows:

A record including a financial record, of a Commonwealth or local agency that:

- a. Is not exempt under Section 708 of the Act;
- b. Is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- c. Is not protected by a privilege.

C. The Municipality shall not provide records that are exempted from public disclosure pursuant to Section 708(b) of the Act, regardless of whether a person or entity provides a release for such information.

D. Pursuant to Section 708(b), draft meeting minutes of the Township Board of Supervisors may be provided to the Members, the Secretary, and the Solicitor to review. Such a dissemination of draft minutes for review for purposes of subsequent approval shall not constitute a waiver of the exemption concerning draft meeting minutes.

E. Regardless of the exemptions set forth in Section 708(b), Municipality shall not provide documents or records that are privileged or protected by federal or state law or by any court order. In the event the Open Records Officer cannot determine the nature of a document with regard to privileged or other exemption, the Open Records Officer is authorized to seek guidance from the Municipality Solicitor with regard to the same.

F. Municipality shall individually evaluate all exemptions and apply each exemption separately for purposes of determining what documents shall be provided pursuant to the Act.

G. For purposes of this policy, the Municipality shall maintain records pursuant to the time frames established pursuant to their Record Retention and Destruction procedures.

- H. Records Management Analysis. The Municipality has the authority in consultation with the Pennsylvania Museum and Historical Commission to create a retention policy governing records of the Municipality.

Section 3. Procedure for Requesting Records.

- A. All requests for documents must be a written request submitted on a form as prescribed by the Municipality. All requests must be in a manner so that the material requested describes the records requested with specificity. Verbal requests shall not be considered official requests for purposes of the timeframes established by the Open Records Law. For purposes of defining a “written request” the Municipality shall accept requests by email, facsimile, mail or in person pursuant to the regulations outlined herein. Such requests shall only be received during regular business hours of the Municipality Office as posted.
- B. All requests must be submitted to the Open Records Officer. In no event shall a request be considered officially submitted until received by the Open Records Officer.
- C. Upon receipt of a written request for a public record, the Open Records Officer shall make a diligent attempt to determine whether such a request involves a public record and whether the Municipality is in possession of the subject record.
- D. Municipality shall not be required to create a record which does not currently exist or compile, maintain format or organize a record in a manner not maintained as of the date of the request.
- E. Municipality shall follow the Open Records Law procedures for redaction when appropriate.
- F. A requester’s right of access does not include the right to remove a record from the control or supervision of the Open Record’s Officer.

Section 4. Extension of Time

- A. Municipality shall respond to all requests within five business days. In instances of a voluminous request requiring a thirty day extension as provided under Section 902(a)(7) of the Act, or any other circumstances noted in Section 902 relating to an extension of time, the Municipality shall advise the requester within five (5) business days of the receipt of the request of the need

for additional response time. Additional time may be necessary when any of the following factors apply:

- a. Determination. Upon receipt of a written request for access, the Open Records Officer for an agency shall determine if one of the following applies:
 1. The request for access requires redaction of a record in accordance with section 706;
 2. The request for access requires the retrieval of a record stored in a remote location;
 3. A timely response to the request for access cannot be accomplished due to bona fide and specific staffing limitations;
 4. A legal review is necessary to determine whether the record is a record subject to access under this act;
 5. The requester has not complied with the agency's policies regarding access to records;
 6. The extent or nature of the request precludes a response within the required time period.

B. When an extension of time is necessary under the factors set forth above the Open Records Officer shall provide the following information:

1. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason the review requires an extension, a reasonable date that a response is expected and an estimate of applicable fees.
2. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has consented in writing to an extension in excess of 30 days.
3. If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

Section 5. Municipality Discretion. The Municipality may exercise its discretion to make an otherwise exempt record accessible for inspection and copying as set forth in the Pennsylvania Open Records Law, if all of the following conditions apply:

- A. Disclosure of the record is not prohibited by state or federal law or regulation or judicial order or decree;
- B. The record is not protected by a privilege

- C. A determination has been made by the Municipality determining that the public interest favoring access outweighs any individual agency or public interest that may favor restriction of access.

Section 6. Fees for Records Requests.

- A. The Municipality shall adopt the fees as established by the Pennsylvania Office of Open Records and shall revise said fee schedule as the Pennsylvania Office of Open Records provides updates or additional information.
- B. In the event that a fee for the processing a request shall exceed or is reasonably believed to exceed \$100.00, the Municipality shall require a pre-payment of \$100.00 in order to process said request. The Municipality may specify acceptable forms of payment.

Section 7. Denial of Access. In the event that the Municipality seeks to deny a request for information, in whole or in part, the denial shall be in writing and set forth the following information:

- A. a description of the request;
- B. the specific reasons for denial and the support therefore;
- C. the typed or printed name, title business address , business telephone number and signature of the Open Records Officer who has issued such denial; and
- D. the date of the response;
- E. the procedure to appeal said denial under the Open Records Act.

Section 8. Posting. Municipality shall post the following information at the Municipality and on the Municipality's web-site and maintain such information in an up-to-date format when necessary:

- A. Contact information for the Municipality Open Records Officer;
- B. Contact information for the Pennsylvania Office of Open Records or other applicable appeals officer;
- C. A form that may be used to file a request; and
- D. Regulations, policies and procedures of the Municipality relating to the Open Records process.

Section 9. Bid Documents. Municipality shall provide notice on all competitive bid forms related to Municipality procurement that information within proposals, including financial

information of a bidder may be provided as a public record, if appropriate pursuant to the discretion of the Open Records Officer, after a bid is awarded.

Section 10. Appeals. If a written request is denied or deemed denied, the requester may file an appeal within fifteen business days from the mailing date of the agency response or 15 business days from a deemed denial. The exceptions shall state grounds on which the requestor asserts that the record is a public record. The requester may appeal a final determination to the Open Records Office within fifteen days of the denial. Appeals should be sent to:

Terry Mutchler, Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, Fourth Floor
Harrisburg, Pennsylvania 17120