

RESOLUTION NO. 2008 – 40

A RESOLUTION OF THE BURGESS AND TOWN COUNCIL OF THE BOROUGH OF POTTSTOWN ADOPTING AN OPEN RECORDS ACCESS POLICY PURSUANT TO ACT 3, OF 2008, KNOWN AS THE PENNSYLVANIA RIGHT TO KNOW LAW.

WHEREAS, on February 14, 2008, the governor of the Commonwealth of Pennsylvania signed into law Act 3 of 2008 requiring municipalities to establish an official Open Records Access Policy to become effective on or before January 1, 2009; and

WHEREAS, in order to come into compliance with the Pennsylvania Right to Know Law, the Borough has created an Open Records access Policy containing, inter alia, the designation of an open record officer, the establishment of a process to obtain open records, and a Fee Schedule associated with such record request; and

WHEREAS, the Burgess and Town Council of the Borough of Pottstown wishes to formally adopt, by Resolution, the Open Records Access Policy.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Burgess and Town Council of the Borough of Pottstown as follows:

SECTION 1. There is hereby adopted an Open Records Access Policy which shall become the process by which the Borough of Pottstown shall respond to requests for public records. A true and correct copy of the Policy is attached hereto, incorporated herein, and marked as Exhibit "A".

SECTION 2. All other resolutions or policies inconsistent with the Resolution are hereby repealed.

SECTION 3. The amendments to this Policy shall be made from time to time by Resolution of Pottstown Borough Council.

SECTION 4. This resolution shall become effective January 1, 2009.

EXHIBIT A - OPEN RECORDS ACCESS POLICY -OF THE BOROUGH OF POTTSTOWN

SECTION 1. Applicability. This Policy shall govern all requests made for access to open/public records of the Borough of Pottstown (hereinafter "Borough").

SECTION 2. Purpose. The purpose of this Policy is to assure compliance with Act 3 of 2008, the Pennsylvania Right to Know Law, as amended; to provide access to public records of Pottstown Borough; to preserve the integrity of Pottstown Borough's records; and to minimize the financial impact to residents of the Borough regarding resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

SECTION 3. Creation of Position of Open Records Officer. Virginia Takach, the Borough Secretary, is hereby designated as the Open Records Officer, responsible for assuring compliance with the Pennsylvania Right to Know Law, in accordance with the guidelines set forth in this Policy. In addition, the Open Records Officer may designate certain employees to process public record requests. It is the duty and goal of the Open Records Officer to minimize, where possible, the financial impact to the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of all public records.

SECTION 4. Oral/Verbal Request for Access. Oral or verbal requests for access to public records may be honored by the Open Records Officer so long as that verbal or oral request for access to records is made directly to the Open Records Officer. However, if a requester wishes to pursue the relief and remedies provided for in the Pennsylvania Right to Know Law, the request for access to records must be in writing.

SECTION 5. Written Request for Access. Written requests for access to public records of the Borough shall be addressed to the Open Records Officer and shall be specific in identifying and describing each public record requested. The identification or description of the records should be with such sufficient specificity so that the record can be located without speculation as to the record being sought.

A. All requests for public records shall be submitted, in writing, and include the date of the request; the requester's name, address, telephone number, and email address, certification of United States residency, signature of requester and, if duplication is requested, appropriate payment.

B. In no case shall the Borough be required to create a public record which does not exist or to compile, maintain, format or organize a public record in a manner in which the Borough does not concurrently compile, maintain, format or organize the public record.

SECTION 6. Processing of Requests. The Open Records Officer shall make a good faith effort to determine whether each record requested is a public record. The Open Records Officer shall respond to the requestor within five (5) business days from the date of receipt of the written request. The response provided by the Open Records Officer shall consist of (1) approval for access to the public records; (2) review of the request by the designated employee as described in Section 7 below; or (3) denial of the access to the record requested. If the Open Records Officer does not respond within five (5) business days of the receipt thereof, the request is deemed denied.

The Open Records Officer shall facilitate a reasonable response to all requests for Borough public records. In no case however, is the Borough expected to provide extraordinary staff to respond to the requests, but will respond in a manner consistent with the Borough's administrative responsibilities and consistent with the requirements of the Pennsylvania Right to Know Law.

SECTION 7. Requests Under Review. If the request for access is being reviewed, based upon the fact that one of the factors listed in this Section applies, the Open Records Officer shall send written notice to the requestor within five (5) business days of the receipt of the request for access. The notice shall include a statement notifying the requestor that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of the applicable fees owed when the records becomes available.

If the date that a response is expected to be provided is in excess of thirty (30) days, following the five (5) business days allowed for, the request for access shall be deemed denied, unless the requestor has agreed in writing, to an extension to the date specified in the notice. If the requestor agrees to the extension, the requestor shall be deemed denied on the day following the date specified in the notice if the Borough has not provided a response by that date.

Review of the request is limited to situations where:

- A. The record requested contains information which is subject to access, as well as information which is not subject to access that must be redacted prior to grant of access. The redacted information is considered a denial as to that information;
- B. The record requires retrieval from a remote location;
- C. A timely response cannot be accomplished due to staffing limitations;
- D. A legal review is necessary to determine whether the record is a public record;
- E. The requester has failed to comply with the requirements of the Borough's Open Records Access Policy;
- F. The requester refuses to pay the applicable fees;
- G. The extent or nature of the request precludes a response within the required time period.

Upon a determination that one of the factors listed above applies, the Open Records Officer shall send written notice to the requester within five (5) business days of the receipt of the request for access. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided, and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of thirty (30) days, following the five (5) business days allowed for, the request for access shall be deemed denied unless the requester has agreed, in writing, to an extension to the date specified in the notice. 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 8. Approval of Request. If access to the public record requested is approved, the public record shall be available for access during regular business hours at the Pottstown Borough Hall, 100 East High Street, Pottstown, Pennsylvania, 19464, unless the Open Records Officer designates an alternative location where the records can be reviewed. Inspections shall be made between 9:00 a.m. and 4:00 p.m. during any weekday, Monday through Friday, except public holidays or days when Borough Hall is not otherwise, generally, available and open for business.

A. The Open Records Officer or designated employee shall cooperate fully with the requester while also taking reasonable measures to protect the Borough's public records from the possibility of theft and/or modification. The presence of a designated employee is required when public records are examined and inspected.

SECTION 9. Denial of Request/Appeals. If the request is deemed denied or denied:

A. The requester may file an appeal with the Commonwealth Office of Open Records (COOR) within fifteen (15) days of the mailing date of the Borough's notice of denial, or within fifteen (15) days of the deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the agency for delaying or denying the request.

B. Within thirty (30) days of the mailing date of the final determination of the appeals officer of the COOR, the requester or Borough may petition for review or other relief, as required by the rules of the Court of Common Pleas for Montgomery County. The decision of the Court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clear and concisely explain the rationale for the decision. A petition for review under this section shall stay the release of documents until a decision is issued.

SECTION 10. Fees. The following fees shall be due and be paid by any person or entity requesting access to the Borough's public records:

- A. The actual postage on any mailing made in response to said request;
- B. An additional One Dollar (\$1.00) per record, if a certification is being requested of the records being produce.
- C. Fees for duplication of public records in the amount of Twenty-Five Cents (\$0.25) per page, which the Borough, at its discretion, may waive; and
- D. In the event the estimated cost of fulfilling the requests submitted under this Policy is expected to exceed One Hundred Dollars (\$100.00), the Open Records Officer shall obtain the expected cost in advance of fulfilling the request to avoid unwanted expense of Borough resources. Thereafter, the Open Records Officer shall notify the person or entity requesting the copies of the records and copies will not be made until the cost of the copies, as estimated by the Borough Open Records Officer is paid in advance. Either a supplemental bill or a refund shall be made if the actual costs are different than the Borough's estimate.
- E. For specialized documents such as blueprints, color copies, or non-standardized sized documents, as well as, facsimile or microfiche, the actual cost incurred by the Borough.
- F. If the record is maintained electronically or in other non-paper media, duplication fees shall be the fee for duplication on paper.

There is no charge for inspecting the public records. The fees stated above are for request of copies for public records. However, once the request is fulfilled and prepared for release, the open records officer shall not release the records to the requester until the requester submits the payment associated with the production of the records.

SECTION 11. Effective Date/Modification. This policy shall be in effect for all requests for public records made on or after the date of the adoption of this Policy. Any and all amendments to fees, and any and all future changes to this Policy shall be made by Resolution of Borough Council.

This Open Records Access Policy of Pottstown Borough has been adopted by Resolution of the Borough Council on the 29th day of December 2008.