

COPY
Right to Know

**WEST PENN TOWNSHIP
RESOLUTION NO. 5 OF 2009**

**A RESOLUTION BY THE BOARD OF SUPERVISORS OF THE
TOWNSHIP OF WEST PENN, SCHUYLKILL COUNTY,
PENNSYLVANIA, AMENDING SAID TOWNSHIP'S POLICY AND
PROCEDURES FOR (REQUESTING PUBLIC AND FINANCIAL
RECORDS PURSUANT TO THE RIGHT-TO-KNOW LAW.)**

WHEREAS, the requests for public records and the copying thereof have been governed by the Right-to-Know Law, as amended by Act of February 14, 2008, P.L. 6, No. 3; and

WHEREAS, the Township of West Penn, Schuylkill County, Pennsylvania, desires to establish its policy for requesting public and financial records pursuant to the Right-to-Know Law to bring said policy into conformity with the amended Right-to-Know Law.

NOW, THEREFORE, BE IT RESOLVED, as follows:

1. Definitions. The following terms when used in this Resolution shall have the meanings set forth in this section unless the context clearly indicates otherwise.

"Act" shall mean the Right-to-Know Law, as amended on February 14, 2008, P.L. 6, No. 3, as amended from time to time.

"Board of Supervisors" shall mean the Board of Supervisors of the Township of West Penn, Schuylkill County, Pennsylvania.

"Business Day" shall mean any day other than a Saturday, Sunday, holiday, or other day when the Township is not open for business.

"Financial Record" shall mean (a) any account, voucher, or contract dealing with the receipt or disbursement of funds by the Township or the Township's acquisition, use or disposal of services, supplies, material, equipment, or property; (b) the salary or other payments or expenses paid to an officer or an employee of the Township, including the name and the title of the officer or the employee; and (c) the financial audit report (this term does not include work papers underlying an audit).

"Privilege" shall mean the attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege, or any other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania.

"Public Record" shall mean a record, including a financial record, of the Township that is not (a) exempt under Section 708 of the Act; (b) exempt from being disclosed under any other Federal or State Law or Regulation or Judicial Order or Decree; or (c) protected by privilege.

"Record" shall mean information regardless of physical form or characteristics, that documents a transaction or Activity of the Township of West Penn, Schuylkill County,

Pennsylvania, and that is created, received, or retained pursuant to law or in connection with the transaction, business, or Activity, of the aforesaid Township. The term includes a document, paper, letter, map, book, tape, photograph, film, or sound recording, information stored or maintained electronically in a data-processed, or image-processed document.

“Requestor” shall mean a person that is a legal resident of the United States of America and requests a record pursuant to the Act.

“Response” shall mean access to a record or the Township’s written notice to a Requestor granting, denying or partially granting and partially denying access to a record.

“Township” shall mean the Township of West Penn, Schuylkill County, Pennsylvania.

2. Creation and duties of the Open-Records Officer.

a. Pursuant to the terms of the Act the Board of Supervisors shall designate a person to serve as the Township’s Open-Records Officer.

b. Duties.

i. The Open-Records Officer shall receive requests submitted to the Township pursuant to the Act, direct requests to other appropriate persons within and without the Township, track the Township’s progress in responding to the requests, and issue interim and final responses under the Act.

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

(1) Note the date of receipt of the written request.

(2) Compute the date on which the five (5) day period, in which the Township must respond, will expire and make a notation of that date on the written request.

(3) Maintain an electronic or paper copy of the 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 thirty (30) days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.

3. Procedures for requesting public records or financial records.

a. Requests for copies of records must be in writing and directed to the Township’s Open-Records Officer.

b. Written requests may be made in person, by mail, by facsimile, or by electronic means and shall state the date of the request, the name and address of the Requestor, and a clear description of the record(s) sought. A public or financial record will be accessible to

a lawful resident of the United States of America who requests the record pursuant to this policy and the Act at reasonable times during normal business hours for inspection and/or duplication in the medium requested, if that medium exists; otherwise the public record will be provided in the medium in which it does exist. The Township will not compile, maintain, format, or organize a public or financial record in a format in which it does not already do so.

c. Should any request under the Act be directed to an employee of the Township who is not the Open-Records Officer, then that employee shall immediately forward the request to the Open-Records Officer.

4. The Township's response to requests under the Act. The Township shall make a good faith effort to provide requested public or financial records as promptly as feasible. Under the Act the Township must respond to the request within five (5) business days from receipt of the request in accordance with following guidelines:

- a. Grant the requests and provide copies of the records;
- b. Issue a denial, which shall be in writing and shall include:
 - i. A description of the record requested.
 - ii. The specific reason for the denial, including a citation to supporting legal authority.
 - iii. The typed or printed name, title, business address, business telephone number, and signature of the Open-Records Officer on whose authority the denial was issued.
 - iv. The date of the response.
 - v. The procedure to appeal the denial of access under the Act.
- c. If the Township claims an exception to the time requirements, it must issue a response within five (5) business days explaining that the request is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided, and an estimate of the fees owed when the record becomes available. Should the expected date for response be more than thirty-five (35) days from the date of the request then the request for access shall be deemed denied unless the Requestor agrees in writing to an extension of time. This response is only permitted when:
 - i. The request for access requires redaction of record in accordance with Section 706 of the Act (See below);
 - ii. The request for access requires the retrieval of a record stored in a remote location;

iii. A timely response to the request for access cannot be accomplished due to a bona fide and specified staffing limitations;

iv. A legal review is necessary to determine whether the record is record subject to access under the Act;

v. The Requestor has not complied with the Township's policies regarding access to the records;

vi. The Requestor refuses to pay applicable fees authorized by the Act; or

vii. The extent or nature of the request precluded a response within the required time period.

5. Redaction. If the Township determines that a public or financial record contains information that is subject to access as well as information that is not subject to access, the Township'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 or financial record and cannot be separated, the Township shall redact from the record the information which is not subject to access, shall grant access to the information which is subject to access. The Township may not deny access to the record if the information which is not subject to access is capable of being redacted. Information which the Township redacts pursuant to this section shall be deemed denial to that information.

6. Appealing the Township's Right-to-Know Officer's Decision. If a written request for access to a public or financial record is denied or deemed denied, the Requestor may file an appeal with the Commonwealth's Office of Open Records within fifteen (15) business days of the mailing date of the Township's response or within fifteen (15) business days of a deemed denial. The appeal shall state the grounds upon which Requestor asserts the record is a public record or a financial record and shall address any grounds stated by the Township for delaying or denying the request. The appeal shall be directed to the Executive Director, Office of Open Records in Harrisburg; unless the appeal involves a criminal matter in which instance the appeal shall be directed to the Schuylkill County District Attorney.

7. Appealing the Commonwealth's Open Record Officer's Decision.

a. Within thirty (30) days of the mailing date of the final determination of the Appeal Officer related to a decision of the Township or the date access is deemed denied, a Requestor or the Township may file a Petition For Review or other document as required by rule of Court with the Court of Common Pleas of Schuylkill County.

b. A Petition for Review under this section shall stay the release of documents until the Court reaches a decision.

8. Fees for Obtaining Public Records or Financial Records. Sections 1307 of the Act requires the Commonwealth Office of Open Records to establish a fee structure for local agencies, (*i.e.* the Township), which the Township hereby adopts as follows:

- a. Paper copies shall cost Twenty-Five Cents (\$0.25) per page per side.
- b. Certification of Record shall cost One Dollar (\$1.00) per document.
- c. Specialized documents, (*e.g.* blueprints, color copies, and non-standard sized documents), shall cost the actual cost of duplication.
- d. Facsimile/microfiche/other media shall cost the actual cost of duplication.
- e. There shall be no fee for the redaction of documents.
- f. If a record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media unless the Requestor specifically requests the record to be duplicated in the more expensive medium.
- g. Fee for postage shall not exceed the actual cost of mailing.
- h. If a Requestor wishes to inspect rather than receive a copy of a record and the record contains both public and non-public information, the Township may not charge the Requestor for the redaction. However, the Township may charge the Requestor for the copies it must make of the redacted material in order for the Requestor to view the public record. The fee structure outlines above shall apply. If, after inspecting the records, the Requestor chooses to obtain the copies, no additional fee may be charged.
- i. Except as otherwise provided by statute, the law states that no other fee may be imposed unless the Township necessarily incurs costs for complying with requests, and such fees must be reasonable. No fee may be imposed for Township's review of a record to determine whether the record is a public record or a financial record subject to access in accordance with the Act. No fee may be charged for searching for or retrieval of documents. The Township may not charge staff time or salary for complying with the Right-to-Know request.
- j. The Township may require the Requester to prepay the estimated fees for duplication when these estimate fees exceed One Hundred dollars (\$100.00).
- k. The Township may waive the fees for duplication of a public or financial record, including, but not limited to, when:
 - i. The Requestor duplicates the public record or financial record; or
 - ii. The Township deems it to be in the Public interest to do so.

9. Access to Computers. Nothing in the Act should be construed to require access to any computer of the Township, or that of an individual or employee of the Township.

10. Posting. The Township shall post and update the following information in a conspicuous location in the municipal building and on the Township's webpage should the Township create one:

- a. Contact information for the Open-Records Officer.
- b. Contact information for the Pennsylvania Office of Open Records or other applicable appeals officer.
- c. Contact information for the Schuylkill County District Attorney's Office.
- d. A form which may be used to file a request.
- e. A copy of this Resolution.

11. Headings. The headings of sections and parts of this Resolution are for convenience only and shall not impact the construction thereof.

12. Severability. If any section or part of a section of this Resolution shall be declared invalid, such invalidity shall not affect the remaining parts or sections of this Resolution. It is hereby declared to be the legislative intent that this Resolution would have been enacted as if such invalid section, or portion thereof, had not been included therein.

13. Repealer. All Resolutions, or parts of Resolutions, insofar as they are inconsistent herewith, shall be and the same are hereby repealed.

14. Effective Date. This Resolution shall become effective immediately upon this adoption.

DULY ADOPTED this 5th day of January, 2009, by the Board of Supervisors of West Penn Township, Schuylkill County, Pennsylvania, in lawful session duly assembled.

BOARD OF SUPERVISORS OF
WEST PENN TOWNSHIP

By: Randy Troxell
Randy Troxell, Chairman

By: David A. Zeigler
David Zeigler, Vice-Chairman

ATTEST:

Galene Trofoll
Secretary

By: Alfonso Martinez
Alfonso Martinez, Supervisor