

RESOLUTION NO.: 121508

A RESOLUTION OF THE JACKSON TOWNSHIP BOARD
OF SUPERVISORS ESTABLISHING AN OPEN
RECORDS POLICY AND PROVIDING FOR THE
APPOINTMENT OF AN OPEN RECORDS OFFICER

WHEREAS, Jackson Township ("Township") is a second class township, with the Board of Supervisors ("Board") created pursuant to the authority of the Second Class Township Code, 53 P.S. §§ 65101, et seq, as amended, that is located within the County of Lebanon:

WHEREAS, because the Township is a political subdivision, it is considered a local agency pursuant to Section 102 of Act 3 of 2008, otherwise known as the Right to Know Law ("Act"), and therefore adopts the following procedure for requesting, processing and providing public records; and

WHEREAS, this Resolution also sets forth the process for the denial of a request for public records; and

WHEREAS, this Resolution also provides the procedure in which an Open Records Officer shall be acknowledged and appointed by the Board; and

WHEREAS, this Resolution seeks to incorporate herein the purpose and intent of the Act and the definitions and provisions set forth therein.

NOW THEREFORE, in consideration of the Act and the requirements under the Act, the Board hereby resolves as follows:

Section 1. Open Records Officer.

- A. Each year at the first meeting that shall occur in a calendar year, the Board shall appoint an Open Records Officer, and an Alternate Open Records Officer to serve in the capacity of the Open Records Officer in the event the Open Records Officer is unavailable for a period of time in excess of three consecutive business days. This Officer shall be responsible for processing, recording, tracking and otherwise administering all portions of this Resolution, as well as any resolutions that may provide procedures for the retention of documents and the destruction of Documents of the Township.

- B. The Township 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 Township Administrative Building.
- 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 the 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 issue 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) Note the date of receipt on the written request.
 - (ii) Compute the day on which the five-day 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. 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) or the appeal is deemed denied.
 - (iv) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester and a copy of other communications. This subparagraph shall only apply to Commonwealth agencies.

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 Township 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 Board shall be provided to the Board 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 meeting minutes.

E. Regardless of the exemptions set forth in Section 708(b), the Township 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 Township Solicitor with regard to the same.

F. The Township 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 Resolution, the Township shall maintain records pursuant to the time frames established pursuant to Resolution No. ____ relating to Record Retention and Destruction procedures.

Section 3. Third Party Records.

- A. If a third party provides a record to the agency and the agency produces the record that is a public record, legislative record or financial record, the Township shall notify the third-party that the record was provided in response to a request.
- B. If a third party provides a record to the Township that includes a written statement signed indicating that the record contains a trade secret or confidential information, the Township shall notify the third-party of the request within five business days of receipt of the request. The response from the third-party and decision of the Open Record Officer to grant or deny the request shall be governed by Section 707 of the Act.
- C. Request for transcripts shall be governed by Section 707 of the Act, and shall be provided as follows:
 - a. Prior to an adjudication becoming final, binding and non-appealable, transcripts of administrative proceedings shall be provided in accordance with the Township's procedure or contract; and
 - b. Following an adjudication becoming final, binding and non-appealable, transcripts of administrative proceedings shall be provided in accordance with duplication rates established by the Pennsylvania Office of Open Records.

Section 4. Procedure for Requesting Records.

- A. All requests for documents must be a written request submitted on a form as established by the Township. Verbal requests shall not be considered official requests for purposes of the timeframes established by the Right to Know Law. For purposes of defining a "written request" the Township shall accept requests by email, facsimile, mail or in person pursuant to the regulations outlined herein.
- 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 Township is in possession of the subject record.
- D. The Township 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. The Township shall follow the Open Records Law procedures for redaction when appropriate.

Section 5. Extension of Time

- A. The Township 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 Open Records Officer shall advise the requester within five (5) days of the need for additional 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 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 for the review, a reasonable date that a response is owed when the record becomes available. 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 agreed in writing to an extension to the date specified in the notice.

2. 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 6. Board Discretion.

The Board may exercise its discretion to make an otherwise exempt record accessible for inspection and copying as set forth in the Act, 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. the Board determines that the public interest favoring access outweighs any individual agency or public interest that may favor restriction of access.

Section 7. Fees for Records Requests.

- A. The Township 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 Township shall require a pre-payment of \$100.00 in order to process said request.
- C. The Board has the discretion to waive the fee.

Section 8. Denial of Access.

In the event that the Township 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 Act.

Section 9. Posting.

Township shall post the following information at the Township's Administrative Building and on the Township's web-site and maintain such information in an up-to-date format when necessary:

- A. Contact information for the Township's 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
- D. Regulations, policies and procedures of the Township relating to this Resolution.

Section 10. Bid Documents. The Township shall provide notice on all competitive bid forms related to 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.

The appeal of any action which is covered by this Resolution shall take place pursuant to the time limitations, provisions and procedures outlined in Section 1101 of the Pennsylvania Open Records Law.

DULY ADOPTED as a Resolution by Jackson Township Board of Supervisors, Lebanon County, Pennsylvania, in lawful session duly assembled this 15 day of DEC., 2008.

ATTEST:

JACKSON TOWNSHIP BOARD OF SUPERVISORS

By Clyde C. Decker
Secretary

By James D. Moyer
Chairman

By [Signature]
ViceChairman

JACKSON TOWNSHIP
RIGHT TO KNOW POLICY

Purpose:

The Township Supervisors recognize the importance of public records as the record of the Township's actions and the repository of information about the Township. The public has the right under the Pennsylvania Right-to-Know Law to inspect and to procure copies of public records, with certain exceptions, subject to Township policies and administrative regulations.

Definitions (65 P.S. § 67.102):

"Confidential Proprietary Information" shall mean commercial or financial information received by the Township, including information which is privileged or confidential; and the disclosure of which would cause substantial harm to the competitor of the position of the person that submitted the information.

"Financial Record" shall mean any account, voucher or contract dealing with the receipt or disbursement of funds or acquisition, use, or disposal of services, supplies, materials, equipment or property; or the salary or payments or expenses, to any officer or employee, including the individuals name and title; and a financial audit report, excluding the audits underlying work papers.

"Personal Financial Information" shall mean an individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances.

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

"Public Record" shall mean any record, including any financial record, that is not protected by a defined privilege or is not exempt from being disclosed under one of the exceptions in Pennsylvania's Right-to-Know Law (§ 708) or under other federal or state law or regulation, or judicial decree or order.

"Record" shall mean any information, regardless of physical form or characteristics, that documents the Townships transaction or activity and is created, received or retained pursuant to the law or in connection with a Township transaction, business or activity, including: a document; paper; letter; map; book; tape; photograph; film or sound recording;

information stored or maintained electronically; and a data-processed or image-processed document.

“Requestor” shall mean a legal resident of the United States, or an agency, to request access to a record.

“Response” shall mean the Township’s notice in finding a requestor of a granting of access to a record or the Township’s written notice to a requestor granting, denying, or partially granting and partially denying access to a requested record.

Authority (65 P.S. §§ 67.302, 67.305, 67.504, 67.701):

The Supervisors shall make the Township’s public records available for inspection and duplication to a requester, in accordance with law, Township Policy and administrative regulations.

The Supervisors exempt from public inspection any material whose disclosure would constitute an invasion of privacy, unless the individual concerned consents in writing to public disclosure of the materials.

Guidelines (65 P.S. § 67.701) :

Requesters may inspect and procure copies of the public records of the Township during the regular business hours of the administrative office.

The Requester’s right of access does not include the right to remove a record from control or supervision of the Open Records Officer.

A public record shall be provided to the requestor in the medium requested if it exists in that form. Otherwise, it shall be provided in its existing medium.

The Township is not required to create a public record that does not exist nor to compile, maintain, format or organize a public record in any manner different from that currently maintained by the Township. If a public record is maintained only in an electronic format, the Township shall duplicate the record on paper, upon request.

Information shall be made available to individuals with disabilities in an appropriate format, upon request with sufficient advance notice.

Request for Access (65 P.S. §§ 67.504, 67.505, 67.701, 67.703):

A request for access to a public record shall be submitted to the Right-to-Know Officer in person, via facsimile, US Mail or designated email address.

Each request may include the following information:

1. Identification of a requested record, with sufficient detail.
2. Medium in which the record is requested.
3. Name and address of the person to receive the Township's response.

All requests must be in writing. Written requests do not need to include an explanation why information is sought or the intended use of the information unless otherwise required by law.

A form Right-to-Know request shall be maintained at the administrative office of the Township and through the Township's website.

Response to Request (65 P.S. §§ 67.502, 67.901, 67.901):

Township employees shall be directed to immediately forward requests for access to public records to the Open Records Officer.

The Right-to-Know Officer shall review the request, determine if the requested record is a public record, determine whether the Township has possession, custody or control of the record, and respond promptly, within five (5) business days of receiving the request.

If the Township fails to respond to a request within five (5) business days, the request for access shall be deemed denied.

If the Township determines that the request will be granted, a response shall be sent within five (5) business days. The response shall include the regular business hours of the administrative office, the medium in which the record is provided, and the assessed fees.

If the Township determines that more than five (5) business days are required to respond to the request, in accordance with the factors stated in law, notice shall be sent within five (5) business days of receipt of request. The notice shall indicate that the request is being reviewed, the reason that the review requires an extension, the date when the response is expected, and an estimate of the applicable fees owed when the record becomes available. If a response is not provided by the specified date, it shall be deemed denied on the day following that date.

A requester may consent in writing to an extension that exceeds thirty (30) days, in which case the request shall be deemed denied on the day following the date specified in the notice if the Open Records Officer has not provided a response by the date.

Granting of Request (65 P.S. §§67.701, 67.704):

If the Open Records Officer determines that the request will be granted, the response shall inform the requester that access is granted and either include information on the regular business hours of the administration office, provide electronic access, or state where the requester may go to inspect the records or information electronically at a publicly accessible

site. The response shall include a copy of the fee schedule in effect, a statement that prepayment of fees is required in a specified amount if access to the records will cost in excess of \$100, and the medium in which the records will be provided.

A public record shall be provided to the requester in the medium requested if it exists in that form. Otherwise, it shall be provided in its existing medium. However, the Township is not required to permit use of its computers.

The Open Records Officer may respond to a records request by notifying the requester that the record is available through publicly accessible electronic means or that the Township shall provide access to inspect the record electronically. If the requester, within thirty (30) days following receipt of the Township's notice, submits a written request to have the record converted to paper, the Township shall provide access in printed form within five (5) days of receipt of the request for conversion to paper.

A public record that the Township does not possess but is possessed by a third party with whom the Township has contracted to perform a governmental function and which directly relates to that governmental function shall be considered a public record of the Township. When the Township contracts with such a third party, the Township shall require the contractor to agree in writing to comply with requests for such records to provide the township with the requested record in a timely manner to allow the Township to comply with the law.

If the Open Records Officer determines that the public record contains information both subject to and not subject to access, the Open Records Officer shall grant access to the information subject to access and deny access to the information not subject to access. The Open Records Officer shall redact from the record the information that is not subject to access. The Open Records Officer shall not deny access to a record if information is able to be redacted.

If the Open Records Officer responds to a requester that a copy of the requested record is available for delivery at the administrative office and the requester does not retrieve the record within sixty (60) days of the Township's response, the Township shall dispose of the copy and retain any fees paid to date.

Notification to Third Parties (65 P.S. § 67.707):

When the Township produces a record that is not a public record in response to a request, the Open Records Officer shall notify any third party that provided the record to the Township, the person that is the subject of the record, and the requester.

The Open Records Officer shall notify a third party of a record request if the requested record contains a trade secret or confidential proprietary information, in accordance with law and administrative regulations.

Denial of Request (65 P.S. §§ 67.506, 67.706, 67.901, 67.903):

If the Open Records Officer denies a request for access to public records, whether in whole or in part, a written response shall be sent within five (5) business days of receipt of the request. A response denying the request shall include the following:

1. Description of the record requested.
2. Specific reasons for denial, including a citation of supporting authority.
3. Name, title, business address and telephone number and signature of the Right-to-Know Officer who denied the request.
4. Date of the response.
5. Procedure to appeal denial of access.

The Open Records Officer shall not deny access to a public record based on the intended use by the requestor.

The Open Records Officer may deny a request for access to a record if the requester had made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Township.

The Open Records Officer may deny a request for access to a record when timely access is not possible due to a disaster, or when access may cause physical damage or irreparable harm to the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.

Information that is not subject to access and is redacted from a public record shall be deemed a denial.

Appeal of Denial (65 P.S. § 67.1101):

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the State's Office of Open Records within fifteen (15) business days of the mailing date of the Open Records Officer's response or deemed denial.

Fees (65 P.S. § 1307):

The fees shall be determined by the Pennsylvania Office of Open Records.

Duplicates of public records shall be provided by the Township upon payment of applicable fees. A list of fees that apply shall be provided to each requestor, posted in the Township's administrative offices, and be available electronically on the Township's website.

The Township shall not assess any fees for staff time or resources used to evaluate or redact a request for access to public records.

The Township may require prepayment of estimated fees when the fee required to fulfill the request is expected to exceed \$100.00.

Delegation of Responsibility (65 P.S. §§ 67.502, 67.901, 67.1101):

The Supervisors shall appoint a Right to Know Officer.

The Right-to-Know Officer shall ensure that the Township's policy governing access to public records and the list of applicable fees are posted at the administrative office of the Township and are made available electronically.

The Right-to-Know Officer shall be responsible to:

1. Receive written requests for access to records submitted to the Township.
2. Review and respond to written requests in accordance with law, Township policy and administrative regulations.
3. Direct requests to other appropriate individuals in the Township or in another agency.
4. Track the Township's progress in responding to requests.
5. Issue interim and final responses to submitted requests.
6. Maintain a log of all record requests and their disposition.
7. Ensure Township staff is trained to perform assigned job functions relative to requests for access to records.

Upon reviewing a request for access to records, the Open Records Officer shall:

1. Note the date of receipt on the written request.
2. Compute and note on the written request the date on which the five-day period for response will expire.
3. Maintain an electronic or paper copy of the written request for thirty (30) days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.