

**TOWNSHIP OF HEMPFIELD
RESOLUTION NO. 2008 - 103**

**A RESOLUTION OF THE TOWNSHIP OF HEMPFIELD,
WESTMORELAND COUNTY, PENNSYLVANIA, ADOPTING A POLICY
FOR ADMINISTERING REVIEW AND RESPONSES TO REQUESTS
FOR PUBLIC RECORDS PURSUANT TO ACT 3 OF 2008, 65 P.S.
SEC. 67.101, ET. SEQ., EFFECTIVE JANUARY 1, 2009**

WHEREAS, Act 3 of 2008 (65 P.S. § 67.101), known as the Right-to-Know Law (RTKL) will become effective January 1, 2009; and,

WHEREAS, pursuant to 65 P.S. § 67.102 of RTKL, the Township of Hempfield (hereinafter referred to as “Township”) is a local agency subject to the RTKL; and,

WHEREAS, the Township recognizes that, in order to have transparency in its actions, it is important that public records are readily open and available to the public; and,

WHEREAS, the Township desires to establish a policy to provide access to and procure copies of public records, with certain exceptions, as provided by the RTKL; and,

WHEREAS, the Township further recognizes that the RTKL provides that certain records are confidential and are not subject to disclosure; and,

WHEREAS, the Township hereby declares its intent to comply with the RTKL and to establish policies and regulations for the access to public records kept or maintained by the Township in accordance with the RTKL.

NOW, THEREFORE, be it resolved and it is hereby resolved as follows:

Section I – Definitions:

The words and phrases used in this policy shall have the meanings given to them by 65 P.S. § 67.102, unless the context clearly indicates otherwise.

Section II – Policy:

It is the intent of the Township to declare that all records are presumed to be public records unless the record is exempt under § 708 of the RTKL; the record is privileged; or the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. All public records are available for inspection and/or duplication in accordance with the RTKL, this policy and all applicable administrative regulations. The Township recognizes that it is the Township's burden to prove by preponderance of the evidence that the record is not a public record.

SECTION III – Delegation of Responsibility:

The Township's Manager is designated as the Township's Open Records Officer and shall be responsible to:

- A. Receive requests submitted to the Township under the RTKL.
- B. Direct requests to other appropriate persons within the Township or to appropriate persons in another agency.
- C. Track the Township's progress in responding to requests.
- D. Issue interim and final responses under the RTKL.
- E. Upon receipt of a request for a public record or financial record, the Open Records Officer shall:
 - 1. Note the date of the receipt of a written request on the written request.
 - 2. Compute the day on which the five (5) day period under Section 901 of the RTKL will expire and make a notation of that date on the written request.

3. 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 thirty (30) days or, if an appeal is filed, until a final determination is issued under Section 1101 (b) of the RTKL or the appeal is deemed denied.
 4. Create a log of all requests which shall include the date of the request, the documents requested, the requestor's name, and the date the request was fulfilled or denied.
- F. Ensure that the Township staff, employees, and elected or appointed officials are adequately trained to perform the job functions and to respond to requests for access to public records to the Open Records Officer.

SECTION IV – Guidelines and Procedures:

- A. All requests for access to a public record or financial records shall be in writing.
- B. The written request shall be on the form attached hereto as Exhibit "A" or on the form developed by the Office of Open Records of the Commonwealth of Pennsylvania.
- C. Written requests personally delivered to the Township shall be delivered during the normal business hours of the Township, to wit: 8:00 a.m. to 4:30 p.m., Monday through Friday (holidays or days on which the Township is closed are excluded).
- D. Written requests received by mail shall be sent to the attention of the Township Open Records Officer and mailed to the following address: 1132 Woodward Drive, Suite A, Greensburg, PA 15601. A written request shall be deemed

received by the Open Records Officer three (3) days after the same is postmarked or, if sent by registered or certified mail, on the date received by the Open Records Officer.

- E. Written requests sent by email or facsimile shall be sent to an officially designated email address or officially designated facsimile address and shall be deemed received on the first business day following the emailing or faxing of the request.
- F. Disruptive requests:
 - 1. The Township may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.
 - 2. A denial under this subsection shall not restrict the ability to request a different record.
- G. Disaster or potential damage:
 - 1. The Township may deny a requester access:
 - (i) when timely access is not possible due to fire, flood or other disaster; or
 - (ii) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.

2. To the extent possible, the contents of a record under this subsection shall be made accessible to a requester even when the record is physically unavailable.

H. Township discretion. The Township may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this chapter, if all of the following apply:

1. Disclosure of the record is not prohibited under any of the following:
 - (i) Federal or State law or regulation.
 - (ii) Judicial order or decree.
2. The record is not protected by a privilege.
3. The Township determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

I. Township possession.

1. A public record that is not in the possession of the Township but is in the possession of a party with whom the Township has contracted to perform a governmental function on its behalf, and which directly relates to the governmental function and is not exempt under this policy, shall be considered a public record of the agency for purposes of this policy.
2. Nothing in this policy shall be construed to require access to any other record of the party in possession of the public record.
3. A request for a public record in possession of a party other than the Township shall be submitted to the Open Records Officer of the agency or

party in possession. Upon a determination that the record is subject to access under the Act, The Township Open Records Officer shall assess the duplication fee established under the Act and upon collection shall remit the fee to the party in possession of the record if the party in possession duplicated the record.

- J. The right of access to a public record or financial records does not include the right to remove said record from the control or supervision of the Open Records Officer.
- K. The Township shall not limit the number of records that can be requested.
- L. When responding to a request, the Township is not required to create a record when one does not exist, nor is the Township required to maintain, format or organize a record in a manner which the Township does not currently use.
- M. The Township shall post on its website, if it has one or later creates one, and at the Township offices, contact information for the Township's Open Records Officer, contact information for the Pennsylvania Office of Open Records, the form to be used to file a request, and a copy of this policy.
- N. The Township shall not accept oral or anonymous requests for public records or financial records.

SECTION V – Form of Request, Response to Request, Granting of Request,

Notification to Third Parties, Denial of Request and Appeal Rights:

- A. Term of Request:
 - 1. Subject to the provisions of Section IV, all written requests shall contain the following information:

- (i) Identification or description of the requested record, in sufficient detail to enable the Township to determine which records are being requested.
- (ii) The medium in which the record is requested.
- (iii) Name and address of the person to receive the Township's response.

B. Response to Request:

1. If the Open Records Officer determines that an extension of time is required to respond to a request, in accordance with the factors stated in the Act, written notice shall be sent within five (5) business days of the receipt of the request. The notice shall indicate that the request for access is being reviewed, the reason that the review requires an extension, a reasonable date when the response is expected, and an estimate of the applicable fees owed when the record becomes available.
2. Up to a thirty (30) day extension for valid reasons does not require the consent of the requester. If the response is not given by the specified date, it shall be deemed denied on the day following that date.
3. 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 that date.

4. If the requester agrees to the date extension, the request shall be deemed denied on the day following the date specified in the notice if the Township has not provided a response by that date.
5. The Township shall not transmit records via email or facsimile.

C. Granting of Request:

1. 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 as to the regular business hours of the Township Officer or state where the requester may go to inspect the records electronically at a publicly accessible site. The response shall also include the fee scheduled in effect, a statement that prepayment of fees is required in a specific amount if access to the records will cost in excess of One Hundred (\$100.00) Dollars, and the medium in which the records will be provided.
2. 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 will not be required to permit use of its computer.
3. 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 the 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 the request for conversion to paper.

4. 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.
5. If the Open Records Officer determines that a public record contains information both subject to and not subject to access, he shall grant access to the information subject to access and deny access to the information that is not subject to access. The Open Records Officer will redact from the record that information that is not subject to access. The Open Records Officer shall not deny access to the record if information is able to be redacted.
6. If the Open Records Officer responds to the requester that a copy of the requested record is available for delivery at the Township 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.

D. Notification to Third Parties

1. When the Township provides, in response to a request, a record that is not a public record generated by the Township, 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.

2. 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 regulations.

E. Denial of Request

1. If the Open Records Officer denies a request for access to public record, whether in whole or in part, a written response will be sent within five (5) business days of the receipt of the request. The response denying the request shall include the following:
 - (i) Description of the requested record.
 - (ii) Specific reasons for the denial, including citation of the supporting authority in the Act and/or this policy.
 - (iii) Name, title, business address, business telephone number and signature of the Open Records Officer on whose authority the denial was issued.
 - (iv) Date of response.
 - (v) Procedure for the requester to appeal a denial of access.
2. The Open Records Officer may deny a request for access to a record if the requester has made repeated requests for the same record and the repeated requests have placed an unreasonable burden on the Township.
3. 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.

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

F. Appeal of a Denial

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

SECTION VI – Fees:

- A. Pursuant to § 1307 of the RTKL, the Township shall establish and keep current a list of reasonable fees to be charged for requests of public records or financial records.
- B. No fees may be imposed for a review of a request or for a review of a record to determine whether the record is a public record or financial record subject to access pursuant to the RTKL.
- C. There is attached hereto and marked Exhibit “B”, a Schedule of Fees which shall be paid by the requester of a public record or financial record. This fee schedule shall only be amended by adoption of resolution. In the event that the Pennsylvania Office of Open Records or the RTKL is amended to increase or decrease said fees, the Township shall, by resolution, adopt any such increase or decrease.

SECTION VII – Retention of Records:

Nothing in this Resolution shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of the Township established pursuant to the Municipal Records Act (53 Pa.C.S.A. § 1381, et seq.) or the rules and regulations promulgated thereunder.

RESOLVED this 22nd day of December, 2008.

TOWNSHIP OF HEMPFIELD

By _____
Chairman

ATTEST: (SEAL)

Secretary