

**SOUTH MANHEIM TOWNSHIP RESOLUTION # 415**

**A RESOLUTION BY THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF SOUTH MANHEIM, SCHUYLKILL COUNTY, PENNSYLVANIA, ENACTING A POLICY AS REQUIRED BY THE RIGHT-TO-KNOW LAW OF FEBRUARY 14, 2008, P.L. 6, NO. 3, 65 P.S., 67.101 et seq., WHICH AMENDS THE TOWNSHIP'S OPEN RECORDS POLICY ADOPTED JANUARY 1, 2009.**

**OPEN RECORDS POLICY**  
**EFFECTIVE August 12, 2015**

**Open Records Officer**

The Township shall designate the Township Secretary to act as the Township's Open-Records Officer, pursuant to the Right-To-Know Law (hereinafter referred to as the "Law"). The Township Secretary shall receive requests submitted to the Township under the Law, direct requests to other appropriate persons within the Township or to appropriate persons in another Township, track the Township's progress in responding to requests, and issue interim and final responses under the Law.

Upon receiving a request for a public record, the Township Secretary shall do all of the following:

1. Note the date of receipt on the written request.
2. Compute the day on which the five-day period for a response 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 30 days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.

The Township shall have posted at the Township Municipal Building the contact information for the Township Secretary and for the Commonwealth's Office of Open Records, a form which may be used to file a public record request, and the Township's Open Records Policy.

**Requests and Fees**

Public records will be available for inspection and copying at the Township Municipal Building during normal business hours, Monday through Friday, 9:00 AM to 3:00 P.M., with the exception of holidays.



Requests for copies of public records must be in writing and directed to the Township Secretary. Written requests can be made in person, by mail, by facsimile, or by e-mail or by any other electronic means and shall state the date of the request, the name and address of the requestor, and a clear description of the records sought.

A record will be accessible to a resident of the Commonwealth of Pennsylvania who requests a record pursuant to this policy and the Law at reasonable times during normal business hours for inspection and for duplication in the medium requested, if that medium exists. Otherwise, the record will be provided in the medium in which it exists. The Township Secretary will not compile, maintain, format or organize a public record in a manner in which it does not already do so.

Paper copies will be \$0.25 per page per side. If mailing is requested, the cost of postage will be charged. If a disk is requested, it will be provided by the Township at the cost of \$1.00 per disk. A new disk will be necessary each time records are provided. Fax copies will be available at the cost of \$.50 per page. E-mail copies will be available at the cost of \$1.00 per transaction. If "True and Correct Certification" is requested, an additional charge of \$2.00 will be added. The Township will require prepayment if the fees are expected to exceed \$100.

A "Public Record" under the Law is defined as a record that is not exempt by the Law, is not exempt from being disclosed under any Federal or State law, regulation, judicial order or decree, and is not protected by a privilege. A record under the Law is "[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of [the Township] and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the [Township]. The term includes 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."

### **Exemptions**

The Law specifically exempts certain records from the definition of a public record. Even if a document meets the above definition for public records, it is not available to the public if it falls within one of the following exemption categories:

1. A record, the disclosure of which:
  - a. would result in the loss of Federal or State funds by the Township; or
  - b. would be reasonably likely to result in substantial and demonstrable risk of physical harm to or the personal security of an individual.
2. A record maintained by the Township in connection with the military, homeland, security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.



3. A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a Township building, public utility, resource, infrastructure, facility or information storage system, which may include Township:
  - a. documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;
  - b. lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and
  - c. building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.
4. A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.
5. A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.
6.
  - a. The following personal identification information:
    - i. A record containing all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number.
    - ii. A spouse's name, marital status or beneficiary or dependent information.
    - iii. The home address of a law enforcement officer or judge.
  - b. Nothing in this paragraph shall preclude the release of the name, position,



salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a Township official or Township employee.

c. The Township may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

7. The following records relating to a Township employee:

a. A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.

b. A performance rating or review.

c. The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency.

d. The employment application of an individual who is not hired by the Township.

e. Workplace support services program information.

f. Written criticisms of an employee.

g. Grievance material, including documents related to discrimination or sexual harassment.

h. Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of the Township that results in demotion or discharge.

i. An academic transcript.

8. a. A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.

b. In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.



9. The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for the Township.
10. a. A record that reflects:
- i. The internal, predecisional deliberations of the Township, its members, employees or officials or predecisional deliberations between Township members, employees or officials and members, employees or officials of another Commonwealth, legislative and/or judicial agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.
  - ii. The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.
- b. Subparagraph (a)(i) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under the Law and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.
- c. This paragraph shall not apply to a written or Internet application or other document that has been submitted to request Commonwealth funds.
- d. This paragraph shall not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion.
11. A record that constitutes or reveals a trade secret or confidential proprietary information.
12. Notes and working papers prepared by or for a Township public official or Township employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.
13. Records that would disclose the identity of an individual who lawfully makes a donation to a Commonwealth, legislative and/or judicial agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named Township public official or employee of the Township, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.
14. A record of the Township relating to or resulting in a criminal investigation,



including:

- a. Complaints of potential criminal conduct other than a private criminal complaint.
  - b. Investigative materials, notes, correspondence, videos and reports.
  - c. A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
  - d. A record that includes information made confidential by law or court order.
  - e. Victim information, including any information that would jeopardize the safety of the victim.
  - f. A record that, if disclosed, would do any of the following:
    - i. Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
    - ii. Deprive a person of the right to a fair trial or an impartial adjudication.
    - iii. Impair the ability to locate a defendant or codefendant.
    - iv. Hinder the Commonwealth's ability to secure an arrest, prosecution or conviction.
    - v. Endanger the life or physical safety of an individual.
    - vi. This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. § 3754(b)(relating to accident prevention investigations).
15. A record of the Township relating to a noncriminal investigation, including:
- a. Complaints submitted to the Township.
  - b. Investigative materials, notes, correspondence and reports.
  - c. A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L. 1559, No. 169), known as



the Whistleblower Law.

- d. A record that includes information made confidential by law.
- e. Work papers underlying an audit.
- f. A record that, if disclosed, would do any of the following:
  - i. Reveal the institution, progress or result of a Township investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by the Township or an executed settlement agreement unless the agreement is determined to be confidential by a court.
  - ii. Deprive a person of the right to an impartial adjudication.
  - iii. Constitute an unwarranted invasion of privacy.
  - iv. Hinder the Township's ability to secure an administrative or civil sanction.
  - v. Endanger the life or physical safety of an individual.
- 16. a. Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.
  - b. This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the Township or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.
- 17. DNA and RNA records.
- 18. An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.
- 19. a. Draft minutes of any meeting of the Township until the next regularly scheduled meeting of the Township.
  - b. Minutes of an executive session and any record of discussions held in



executive session.

20. a. The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the Township relative to the following:
  - i. The leasing, acquiring or disposing of real property or an interest in real property.
  - ii. The purchase of public supplies or equipment included in the real estate transaction.
  - iii. Construction projects.
- b. This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.
21. Library and archive circulation and order records of an identifiable individual or groups of individuals.
22. Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.
23. A record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.
24. A proposal pertaining to Township procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of Township proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).
25. A record or information relating to a communication between the Township and its insurance carrier, administrative service organization or risk management office. This paragraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.
26. A record or information:
  - a. identifying an individual who applies for or receives social services; or
  - b. relating to the following:



- i. the type of social services received by an individual;
- ii. an individual's application to receive social services, including a record or information related to a Commonwealth, legislative and/or judicial decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the Commonwealth and the identity of a caregiver or others who provide services to the individual; or
- iii. eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

27. Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure).

28. A record identifying the name, home address or date of birth of a child 17 years of age or younger.

The Township Secretary may exercise his/her discretion to make any otherwise exempt record accessible for inspection and copying, if all of the following apply:

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

### **Response to Requests**

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

The Township Secretary shall make a good faith effort to provide the requested public records as promptly as feasible. The Township Secretary must respond to the request within 5 business days from receipt of the request in accordance with the following guidelines:



1. Providing copies of the records;
2. Issuing a Denial, which must include:
  - a. A description of the record requested;
  - b. The specific reason for the denial, including a citation of supporting legal authority;
  - c. The name, title, address, telephone number, and signature of the open records officer who issued the denial;
  - d. The date of the response; and
  - e. The procedure to appeal the denial. If there is no response from the Township Secretary within 5 business days from the receipt of the request, the request is deemed as a denial.
3. Responding in writing to explain that an extension of time is required to respond to a request. If the Township Secretary claims an "extension of time" is required, he/she must issue a response (within 5 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 applicable fees owed when the record becomes available. This "response" is only permitted where one of the following exceptions applies:
  - a. The request requires redaction (see below);
  - b. The request requires the Township Secretary to retrieve documents that are stored in a remote location;
  - c. The Township Secretary cannot respond due to "bona fide and specified" staffing limitations;
  - d. A legal review is necessary to determine whether the record is a public record;
  - e. The requester has not complied with the Township's policies regarding access to records;
  - f. The requester refuses to pay applicable fees; or
  - g. The extent or nature of the request precludes a response within the required time period.

Even if one of the above exceptions applies, the anticipated "final" response date must be



within 35 days of the original request. If the response is expected to or actually does take longer than 35 days, the Township Secretary's response is treated as a denial.

If the Township Secretary's response to a requester states that copies of the requested records are available for delivery at the Township Municipal Building and the requester fails to retrieve the records within 60 days of the Township Secretary's response, the Township Secretary may dispose of any copies which have not been retrieved and retain any fees paid to date.

### Redaction

If a document contains public and non-public information, the Township Secretary must redact (strike out) the non-public information and produce the remainder of the document. The matter that is redacted is treated as a "denial", subject to denial issuance set forth above.

### Appealing a Township Decision

- Authorization. If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Commonwealth's Office of Open Records, or with the appeals officer designated by the Office of Open Records, within 15 business days of the mailing date of the Township Secretary's response or within 15 business days of a deemed denial. The appeal shall state grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the Township Secretary for delaying or denying the request.
- Final Determination. Unless the requester agrees otherwise, the appeals officer shall make a final determination on the appeal which shall be mailed to the requester and the Township within 30 days of receipt of the appeal. If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.
- Hearings. Prior to issuing a final determination, a hearing may be conducted by the appeals officer. The determination by the appeals officer shall be a final order. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the Township.
- Direct Interest. A person other than the Township Secretary or requester with a direct interest in the record subject to an appeal may, within 15 days following receipt of actual knowledge of the appeal, but no later than the date the appeals officer issues an order, file a written request to provide information or to appear



before the appeals officer or to file information in support of the requester's or Township's position. The appeals officer may grant a request of a requester with direct interest if: (i) no hearing has been held, (ii) the appeals officer has not yet issued its order, and (iii) the appeals officer believes the information will be probative. Copies of the written request shall be sent to the Township and the requester.

• **Appeals Officer Duties.** An appeals officer shall do all of the following:

1. Set a schedule for the requester and the Township Secretary to submit documents in support of their positions.
2. Review all information filed relating to the request. The appeals officer may hold a hearing. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.
3. Consult with Township counsel as appropriate.
4. Issue a final determination on behalf of the Office of Open Records or Township.

**Judicial Review**

• **Appeals Officer Denial.** Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of the Township Secretary is issued or the date a request for access is deemed denied, a requester or the Township Secretary may file a petition for review or other document as might be required by rule of court with the Commonwealth Court. The decision of the Court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision. A petition for review shall stay the release of documents until a decision is issued by the Court.

• **Notice and Records.** The Township Secretary, the requester and the Office of Open Records or designated appeals officer shall be served notice of actions commenced in the Commonwealth Court and shall have an opportunity to respond in accordance with applicable court rules. The record before the Court shall consist of the request, the Township Secretary's response, the appeal filed, the hearing transcript, if any, and the final written determination of the appeals officer.

• **Court Costs and Attorney Fees.** If the Court reverses the final determination of the appeals officer or grants access to a record after a request for



access was deemed denied, the Court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the Court finds either of the following:

1. The Township Secretary willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of the Law; or
2. The exemptions, exclusions or defenses asserted by the Township Secretary in his/her final determination were not based on a reasonable interpretation of law.

The Court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to the Township or the requester if the Court finds that the legal challenge was frivolous. Nothing in the Law shall prohibit the Court from imposing penalties and costs in accordance with applicable rules of court.

- **Civil Penalty.** The Court may impose a civil penalty of not more than \$1,500 if the Township Secretary denied access to a public record in bad faith. If the Township does not promptly comply with a Court order under the Law is subject to a civil penalty of not more than \$500 per day until the public records are provided.

### **Immunity**

- Except as provided in the Law, the Township, Public Officials of the Township or public employees of the Township shall not be liable for civil or criminal damages or penalties resulting from compliance or non-compliance with the Law.

