

THE BOROUGH OF CLARKS GREEN

RIGHT TO KNOW POLICY

Section 1 – Purpose

The purpose of this policy is to establish procedures to ensure that the Borough of Clarks Green complies with the requirements of the Right-T-Know Act, 65 P.S. 66.1 *et seq*, which allows residents of the United States to inspect and obtain copies of public records.

Section 2 – Definitions

For purposes of this policy, the terms set forth below shall have the following meanings:

“Borough” – shall mean the Borough of Clarks Green, Lackawanna County, Pennsylvania.

“Business Day” – shall mean a calendar day in which the administrative office of the Borough is open for business and does not include any day where the administrative offices are closed due to inclement weather, holidays or emergencies.

“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 other payments or expenses paid to an officer or employee of the Borough, including the individual’s name and title; and a financial audit report excluding the audit’s underlying work papers.

“Public Record” – shall mean a record, including a financial record, of the Borough that: (1) is not exempt from disclosure under Pennsylvania’s Right-to-Know Act; (2) is not exempt from being disclosed under any Federal or State law or regulation or judicial order or decree; and (3) is not protected by a privilege.

“Record” – shall mean information, regardless of physical form or characteristics, that documents a transaction or activity of the Borough and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the Borough. The term “records” 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.

“Requester” – shall mean any person that is a legal resident of the United States and requests access to a record pursuant to the Right-To-Know-Act.

“Response” – shall mean access to a record or written notice from the Borough granting, denying or partially granting and partially denying access to a record.

Section 3 – Open Records Officer

The Borough has designated the Borough Secretary to act as the Open Records Officer.

The Open Records Officer shall be responsible for the following duties in order to implement the requirements of this policy:

- 1) Receive all written requests for access to records submitted to the Borough.
- 2) Forward requests to other appropriate persons within the Borough or in another agency for a response.
- 3) Track the Borough's progress in responding to requests for access to records.
- 4) Issue interim and final responses to submitted requests.
- 5) Maintain a log of all record requests and the Borough's responses.
- 6) Ensure appropriate Borough staff are trained to perform assigned job functions relative to request for access to records.

After receiving a written request for access to a public record, the Open Records Officer shall take the following steps in order to track the ongoing status of and final disposition of the Borough's response:

- 1) Note the date on which the written request was received by the Borough.
- 2) Compute the day on which the five (5) business day period for the Borough's response 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, at least until the request has been fulfilled.
- 4) If the written request is denied, in full or in part, maintain the written request for at least thirty (30) days or, if an appeal is filed to challenge the denial, until a final determination is issued regarding the appeal.

The Borough shall post the following information on its official website to implement this policy and comply with the Right-To-Know Act:

- 1) Contact information for the Borough's Open Records Officer.
- 2) Contact information for the State Office of Open Records.
- 3) A copy of the Borough's form which may be used to file a request.
- 4) A copy of this policy.

Section 4 – Requests for Access to Public Records

Any Requester seeking access to or duplication of a public record is encouraged to submit a written request addressed to the Open Records Officer. All Borough employees are directed to forward written requests for access to public records to the Open Records Officer, if they are inadvertently directed to them.

A Requestor is encouraged to complete the Right-To-Know Request Form created by either the Borough or the State Office of Open Records when submitting a written request. Copies of the Borough's form may be obtained on the Borough's official website. The written request must identify or describe the public record sought with sufficient specificity to allow the Open Records Officer to determine which record is being requested, and the name and address to which the Borough should send its response.

The Borough may, in its sole discretion, honor verbal requests for public records in cases where access can be allowed immediately. However, a verbal request shall not be considered an official request requiring a Borough response under this policy.

Any Requester may submit a written request to the Open Records Officer using one of the prescribed Right-To-Know Forms in the following manner:

In person: At the Borough office, 104 North Abington Road, Clarks Green, on any business day during the regular business hours. The hours will generally be 9:00 a.m. – 3:00 p.m., Monday through Friday.

By regular mail: Sent to the attention of the Open Records Officer at the Borough office at 104 North Abington Road, Clarks Green, Pennsylvania 18411.

By facsimile: Sent to the attention of the Open Records Officer at the following facsimile number 570-586-6896. A written request sent via facsimile will not be considered submitted until a complete and legible copy of the facsimile is received by the Open Records Officer.

The Borough reserves the right to deny a Requester access to a public record if the Requester has made repeated requests for the same record, the record has already been provided to the Requester and the repeated requests have placed an unreasonable burden on the Borough.

Section 5 – Borough Response to Written Request

The Open Records Officer will respond to a written request within five (5) business days

after its receipt. During that period, the Open Records Officer will make a good faith effort to locate the requested record, determine if it constitutes a public record, redact any confidential portions to allow for disclosure, and prepare an appropriate response.

The Borough response may take any of the following forms:

- 1) A decision that the requested record is a public record and allowing the Requester to inspect and obtain a copy of the public record, in whole or in part. If the requested record is on the Borough's official website the response should also explain how to access such information. Alternatively, the requested record may be provided with the response.
- 2) A written denial explaining why the requested document is not a public record thus resulting in the denial of the request, in whole or in part.
- 3) A written notice explaining the request is under review and a final determination can be expected within thirty (30) calendar days from the date of the notice.

A denial of a request shall be in writing and shall set forth the following information:

- 1) A description of the record requested;
- 2) The specific reason for the denial, including a citation of supporting legal authority;
- 3) The name, title, address, telephone number and signature of the Open Records Officer on whose authority the denial is issued;
- 4) The date of the response; and
- 5) An explanation of the procedure to appeal the denial.

A written notice explaining a request is under review shall set forth the reasons for the review and advise of the date when a final response can be expected, which date shall be within thirty (30) calendar days from the date of the notice. The Borough may advise that the request is under review if any of the following applies:

- 1) The requested record requires redaction;
- 2) The request requires the Borough to retrieve records that are stored in a remote location;
- 3) The Borough cannot timely respond due to bona fide and specified staffing limitations;
- 4) A legal review is necessary to determine if the record is a public record;
- 5) The request does not comply with the borough's policies regarding access to records;
- 6) The Requester has failed to pay applicable fees; or
- 7) The extent or nature of the request precludes a response within the required time period.

The Open Records Officer shall render a final determination regarding a written request within thirty (30) days from the date of written notice explaining a request is under review.

If the Open Records Officer does not provide the Requester with a written response within the designated time period, the written request may be deemed denied and the Requester may file an appeal within fifteen (15) business days of the expiration of the designated time period, as provided by Section 11 of this policy.

The Open Records Officer may consult with the Borough solicitor to address the Borough's response to a Right-To-Know Act request.

Section 6 – Redacting Records to Allow for Public Access

If a Requester seeks access to a record determined to contain both public and confidential information, the Borough shall grant access to the public information if it is possible to redact the confidential information. The Borough, in its sole discretion, may provide public information contained in a redacted record in a format of its choice, which will allow for timely disclosure of public information while simultaneously protecting against the release of confidential information which is not required to be disclosed under the Act. If the confidential information is an integral part of the record and cannot be separated, the Borough shall deny access to the record.

Personal identification numbers, financial information, home, cellular or personal telephone numbers, personal e-mail addresses, spouse and/or dependent information, and Social Security numbers of individuals are generally not subject to public disclosure, and therefore will normally be redacted from a record otherwise considered a public record.

The Open Records Officer shall consult the Borough's administrative guidelines under this policy when deciding what information may be redacted from a public record.

If the Borough redacts information from any record, the redaction will be treated as a partial denial of the record request, and the Open Record Officer will provide the Requester with a written response regarding the partial denial, as provided in "Section 5 of this policy.

Section 7 – Denial of Public Access to Certain Records

In certain instances, a record will be exempt from the public disclosure requirements of the Right-To-Know Act.

If a record request is denied, the Open Records Officer will provide the Requester with a written response regarding the denial, as provided in Section 5 of this policy.

Section 8 – Electronic Access to Public records

The Borough shall make public records available through publicly accessible electronic means when they exist in that medium. When electronic access is sought for a public record, the Borough will apprise a Requester when a requested record is available through publicly accessible electronic means and advise where the public record may be reviewed and downloaded. If the public record is only maintained electronically and is not publicly available, the Borough will make a paper copy available for inspection upon request subject to payment of the applicable fee.

The Borough will permit electronic access to a public record if it is routinely available only by electronic means, or if the Requester requests electronic access and the record exists in electronic form. A public record will not be considered “routinely available only by electronic means” if the Borough maintains a readily available paper copy of that record for Requester review.

If the Requester makes a written request to access a public record in electronic form, and the public record exists in that medium, the Borough will provide access to the record in one of the following manners as decided by the Borough;

- 1) Provide a computer disk containing the record in electronic form;
- 2) Respond with an e-mail containing an attachment or electronic link to the record; or
- 3) Provide a paper copy of an electronically-stored public record, if confidential information must be redacted from that record to permit access to the public Information.

Section 9 – Inspection of Public Records

After determining that the record requested is a public record, the Borough will allow inspection and duplication. The Borough will provide access in the medium requested if the record exists in that medium. The Borough need not create documents, but will provide access to public records in the formats in which they exist. The Borough

shall not charge a fee if a Requester only seeks to inspect a public record, except where conversion from electronic to paper form is required.

The inspection of a public record by a Requester shall take place at the Borough office during regular business hours; unless an alternative location is designated in advance by the Borough.

Except for copies made and delivered to a Requester pursuant to this policy, no public record shall be removed from the control or supervision of the Borough. In order to preserve the integrity of its public records and facilities, the Borough will take reasonable steps to ensure that a Requester does not alter, deface or otherwise damage public records or facilities. Such reasonable steps may include, but are not limited to: the prohibition of eating and drinking when inspecting public records; employee monitoring of a Requester while inspecting public records; and the immediate termination of the inspection of public records if the Borough reasonably believes the Requester's conduct would result in damage to its public records or facilities.

A Requester is required to comply with all Borough rules and procedures applicable to the public when present at the facilities. The Borough may ask a Requester to immediately leave its facilities if the Requester engages in conduct which disrupts the operation of Borough facilities, accesses or attempts access to unauthorized areas of the Borough facilities, or threatens, harasses or intimidates Borough staff.

Section 10 – Duplication and Fees

A public record will be duplicated for the Requester, if duplication is requested.

Generally, a Requester seeking to obtain a duplicate of a public record is required to appear in person to do so. In appropriate cases, the Borough may decide, in its sole discretion, to mail or otherwise deliver duplicate copies of public records to a Requester.

The fees set forth in this policy shall not exceed the maximum charges established by any duly-promulgated regulations of the State Office of Open Records. The Borough reserves the right to revise these fees from time to time to ensure they comply with the maximum charges allowed by law.

The Borough will charge the following fees when a Requester seeks to obtain a copy and for conversion of an electronic record to paper:

1. Printing copy of non-paper record – twenty-five cents (\$0.25) per page.

2. Photocopying – twenty-five (\$0.25) per page.
3. Certified copy – twenty dollars (\$20.00) flat fee.
4. Electronic copy of record – Electronic copies will normally be provided by means of computer disk. For transfer of an electronic file to a computer disk, the charge is one dollar (\$1.00) for the disk plus twenty dollars (\$20.00) per hour with a minimum charge of \$20.00.
5. Redaction – If redaction is required before the record can be accessed, the Borough will charge twenty dollars (\$20.00) per hour.
6. Mailing copy of record – If a request is made for mailing and the Borough chooses to mail the copy instead of personal pickup, the Requester will pay the actual cost of shipping or postage.
7. Facsimile transmission – If a request is made for facsimile transmission and the Borough chooses to provide facsimile transmission instead of personal pickup, the Requester will pay twenty-five (\$0.25) per page.

The total sum owed shall be paid before the public record is given to the Requester. If the duplication or transmission of a public record will cost one hundred (\$100) or more, that fee must be paid in advance of the request being processed.

The Borough, in its sole discretion, may decide to waive fees associated with the reproduction or delivery of public records if it deems it is in the public interest to do so.

Section 11 – Filing of Appeals

If a Requester wishes to challenge the written denial or deemed denial of a written request for a public record, the Requester must file an appeal with the State Office of Open Records within fifteen (15) business days from the date of the written denial or deemed denial. The appeal shall be in writing and state the grounds upon which the Requester asserts that the requested record is a public record and shall address any grounds stated by the Borough for delaying or denying the request.

Section 12 - Posting of Policy

A copy of this policy and any administrative regulations shall be conspicuously posted in the Borough administrative offices in an area accessible to the public and on the Borough's official website.

Date Adopted: February 9, 2009