

RESOLUTION NO. 2009-1

**RESOLUTION OF THE BOROUGH OF BALLY, BERKS COUNTY,
PENNSYLVANIA ADOPTING PROCEDURES TO GOVERN REQUESTS
FOR ACCESS TO PUBLIC RECORDS AND THE BOROUGH'S
RESPONSE THERETO PURSUANT TO THE RIGHT TO KNOW LAW**

BE IT RESOLVED, and it is hereby resolved by the Borough Council of the Borough of Bally, Berks County, Pennsylvania, that

WHEREAS, Act 3 of 2008 was enacted on February 14, 2008, amending the Right to Know Law and requiring Local Agencies to adopt a policy implementing the provisions and requirements of the Law; and

WHEREAS, the Borough of Bally is a "Local agency" as defined by the Right to Know Law, as amended; and

WHEREAS, the purpose of the resolution is to set forth a policy regarding requests for records made to the Borough of Bally pursuant to the Right to Know Law.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Bally and it is hereby resolved by the authority of the same as follows

SECTION 1. Definitions

The following words and phrases when used in this resolution shall have the meanings given to them in this section unless the context clearly indicates otherwise:

Appeals Officer – The person appointed by the Office of Open Records to review the decision of the Open Records Officer to deny a requester's access to a requested record

Borough – The Borough of Bally

Council – The Council of the Borough of Bally

Office of Open Records – The office within the Commonwealth of Pennsylvania, Department of Community and Economic Development established to implement and enforce the Right to Know Law

Open-Records Officer – The Secretary of the Borough of Bally

Public Record – A record, of the Borough of Bally that:

- (1) is not exempt under section 708 of the Right to Know Law;
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- (3) is not protected by a privilege.

Record – Information, regardless of physical form or characteristics, that documents a transaction or activity of the Borough of Bally and that is created, received or retained pursuant to law or in connection with a transaction, business, or activity of the Borough of Bally. 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.

Requester – A person who is a legal resident of the United States and requests a record pursuant to the Right to Know Law.

Secretary – The Secretary or acting Secretary of the Borough of Bally

SECTION 2. Procedure for Access to Public Records

- A. **General Rule.** Unless otherwise protected by law a public record shall be accessible for inspection and duplication in accordance with the Right to Know Law. A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for access during the regular business hours of the Borough of Bally.
- B. **Construction.** Nothing in this act shall be construed to require access to any computer of the Borough of Bally.
- C. **Verbal or Anonymous Requests.** The Borough of Bally will not fulfill verbal requests for access to records nor will it fulfill anonymous requests for access to records. All requests for records must be in writing.
- D. **Written Requests.** A written request for access to records may be received in person, by mail, by facsimile, or by electronic means. A written request shall be addressed to the Secretary of the Borough of Bally, P.O. Box 217, Bally, PA 19503. The request shall identify or describe the records sought with sufficient specificity to enable the Borough to ascertain which records are being requested and shall include the name and address to which the Borough should address its response. The request shall set forth the name of the person or entity making the request for records.
- E. **Electronic Access.** In addition to A., above, the Borough of Bally may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the agency will provide access to inspect the record electronically. If the requester is unwilling or unable to access the record electronically, the requester may, within thirty days following receipt of the Borough's notification, submit a written request to the Borough to have the record converted to paper.

- F. Creation of Record. When responding to a request for access to a public record, the Borough shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the Borough does not currently compile maintain, format or organize the record.
- G. Redaction. If the Borough of Bally determines that a public record or financial record contains information which is subject to access as well as information which is not subject to access, the Borough'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 record or financial record and cannot be separated, the Borough shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The Borough may not deny access to the public record if the information which is not subject to access is able to be redacted. Information which the Borough redacts in accordance with this subsection shall be deemed a denial under Section 3.

SECTION 3. The Borough's Response to Written Requests for Access

A. General Rule

Upon receipt of a written request for access to a record, the Borough shall make a good faith effort to determine if the record requested is a public record and whether the Borough has possession, custody or control of the identified record and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. The time for response shall not exceed five business days from the date the written request is received by the Borough Open Records Officer. If the Borough fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.

B. Exception

1. Determination.

Upon receipt of a written request for access the Borough Open Records Officer shall determine if one of the following applies:

- (a) The request for access requires redaction of a record;
- (b) The request for access requires the retrieval of a record stored in a remote location;
- (c) A timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
- (d) A legal review is necessary to determine whether the record is a record subject to access;
- (e) The requester has not complied with the Borough 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.

2. Notice.

(a) Upon a determination that one of the factors listed in subsection (a), above, applies, the Open Records Officer shall send written notice to the requester within five business days of receipt of the request for access.

(b) 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 (not exceeding thirty days) by which a response is expected to be provided and an estimate of applicable fees owed when the record becomes available.

(c) If the response will take longer than thirty days, the requester may agree to the Borough's request for a response period longer than thirty days.

C. Open Records Officer Responsibilities

Upon receipt of a written request for access to a record, The Borough shall immediately forward the written request to the Open Records Officer. The Open Records Officer shall:

- (i) Note the date of receipt on the written request.
- (ii) Compute the day on which the five-day period under section subsection A., above, 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 thirty days or, if an appeal is filed, until a final determination is issued under subsection D, below, or the appeal is deemed denied.

D. Denial

If the Borough's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

- (i) A description of the record requested.
- (ii) The specific reasons for the denial, including a citation of 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 is issued.
- (iv) Date of the response.
- (v) The procedure to appeal the denial of access.

SECTION 4. Appeal

A. Appeal of the Borough's Decision

1. If the Borough denies a request for access to a record, the requester may, within fifteen (15) business days of the mailing date of the Borough's response or within fifteen (15) business days of a deemed denial, file an appeal with the Office of Open Records. The appeal must state the grounds upon which the requester asserts that the record is a public record and address the grounds asserted by the Borough for delaying or denying the request for access.

(a) The Office of Open Records will appoint an appeals officer to decide the appeal.

(b) The appeals officer shall make a decision within thirty (30) days receiving the appeal and may conduct a hearing to determine issues of fact prior to making a decision. The appeals officer's decision shall be a final order from which a higher appeal may be taken.

B. Appeal of Appeal Officer's Decision

1. Within thirty (30) days of the mailing date of the final determination of the appeals officer, the requester or the Borough may file a petition for review or other document as required by rule of court with the Court of Common Pleas of Berks County.

2. A party taking an appeal of the decision of the appeals officer must give notice of the appeal to the Borough, or the requester if the Borough is taking the appeal, and to the designated Appeals Officer.

3. A petition for review shall stay the release of documents until the Court has rendered a decision.

C. Recovery of Attorney's Fees Costs and Civil Penalties

1. If the court reverses the final determination of the appeals officer or grants access after a request for access was deemed denied the court may award reasonable attorney's fees and costs of litigation if the Borough's denial of access was made in bad faith or with a willful and wanton disregard of the Right to Know Law or if the Borough's asserted exemptions and exclusions were not based on a reasonable interpretation of the law.

2. If the court denies an appeal and finds that the legal challenge to the denial of access was frivolous the court may award reasonable attorney's fees and the costs of litigation to the Borough.

3. The court may impose a penalty of not more than \$1500.00 against the Borough if it determines the Borough denied access to a public record in bad faith. In addition, the Court may impose a penalty against the Borough for failure to promptly comply with an order to disclose a public record. Any such penalty cannot exceed \$500.00 per day until the public records are provided.

