

County of Berks Right to Know Policy and Procedure January 1, 2009

PURPOSE

1. General Purposes

A. The general purpose of this policy is:

(i) to recognize the value of making information available to the public and to memorialize the County's commitment to continually improve public access to public information and foster public participation in the decision-making process;

(ii) to provide for access to public records in the possession of the County consistent with Act 3 of 2008, as signed by Gov. Edward G. Rendell on February 14, 2008 (known as the "Right-to-Know Law") which becomes effective on January 1, 2009, and creates a presumption of openness regarding the records of the County;

(iii) to appoint a County Open Records Officer who will oversee the implementation of the County Right-to-Know Policy;

(iv) to provide a written framework outlining the procedures and policies necessary to provide for access to records as contemplated under the Right-to-Know Law; and

(v) to provide for the prompt and timely response to requests for records made under the Right-to-Know Law.

ESTABLISHMENT OF COUNTY OPEN RECORDS OFFICER

1. Appointment of Open Records Officer

A. All requests for public records shall be administered by the County Open Records Officer or a departmental designee. The County Open Records Officer will ensure that the operating procedures described herein are followed.

B. The County has designated the following person who shall serve as the County Open Records Officer. Requests should be directed to the County Open Records Officer at the following address:

Title: Berks County Chief Clerk/ Open Records Officer
Address: 13th Floor Services Center
633 Court Street
Reading, PA 19601
Phone: 610-478-6136
Fax: 610-478-6293
Email: Countyopenrecordsofficer@countyofberks.com

C. Pennsylvania's Right-to-Know Law distinguishes between Commonwealth, local agency, legislative and judicial records. Judicial records include the records of Court Administration, Adult Probation, Juvenile Probation, Court Reporters, Domestic Relations, Magisterial District Justice Offices and the Law Library. Requests for these records fall outside this policy and should be directed to:

Title: Court Open Records Officer
Address: District Court Administration
7th Floor Courthouse
633 Court Street CH
Reading, PA 19601
Phone: 610-478-6208
Fax: 610-478-6366
Email: Courtopenrecordsofficer@countyofberks.com

IDENTIFICATION OF RECORDS

1. Records Under the Right-to-Know Law

A. A record under the Right-to-Know law is defined as information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. 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.

B. A record in the possession of a County agency shall be presumed to be a public record unless (1) the record is exempt under the Right-to-Know Law, (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.

C. Under the Right-to-Know Law some types of records are not available to the public. In this category are personal identifiers, medical information, personal notes, computer security information, draft minutes, notes from an executive session, employee records, criminal and non-criminal investigative records, non-real estate tax records, driver records, attorney-client communications, confidential or proprietary information, trade secrets, or records that if disclosed could jeopardize state or federal funds or public safety. This is a partial list of the exempted records. For a complete list of exempted records, the Requester may review Section 708 of the Right-to-Know Law which may be obtained from the County.

PROCEDURE FOR REQUESTING PUBLIC RECORDS

1. Form and Nature of Requests

A. A Requester may make, and the County may fulfill verbal or written requests (including email or fax) for access to records under this policy. If the Requester wishes to pursue the relief and remedies provided for under the Pennsylvania Right-to-Know Law (i.e. pursue an appeal of a denial) the request must be in writing.

B. Requests must describe the records sought with sufficient specificity to enable the County to ascertain which records are being requested. The request must include the name and address to which the response is to be sent. Requesters are encouraged to utilize a uniform request form. A sample request form is attached as Appendix A.

C. All Right-to-Know Law requests must be forwarded to the County Open Records Officer.

D. The County will assume that the Requester is not asking for prohibited or protected records unless specifically requested. In most cases, these exempted records will not be provided.

PROCEDURE FOR REVIEWING REQUESTS FOR PUBLIC RECORDS

1. Review of Records Requests

A. Following the receipt of a request the County will make every effort to fulfill the request within five (5) business days of receipt by the County Open Records Officer or a departmental designee.

B. If the request cannot be fulfilled in five (5) business days, the County Open Records Officer or a departmental designee will send written notice, including email, to the Requester stating (1) the reason(s) why additional time is needed, (2) when the request is expected to be fulfilled, and (3) any fees that may be required.

C. If the County receives a request for a public record that is not in the possession of the County, the County Open Records Officer or a departmental designee will: (1) notify the Requester in writing that they do not possess the record requested and (2) where possible, direct the request to appropriate persons in another agency.

D. If the County receives a request that contains in whole or in part a judicial record or a protected record of a third party (i.e. a confidential record or trade secret), the County Open Records Officer will, within five (5) business days, notify the judicial agency and/or third party that provided the information being requested. The judicial agency and/or third party will then have five (5) business days from receipt of the notice to provide input on the release of the record. The County Open Records Officer will decide whether the information qualifies as confidential, proprietary or otherwise protected information within ten (10) calendar days after the judicial agency and/or third party has received the notice.

OPERATING PROCEDURES FOR RESPONSES TO REQUESTS

1. Action Required Within Five (5) Business Days of Receipt of Request

A. Within five (5) business days of receipt of a written request, the County Open Records Officer or a departmental designee shall:

- (i) date stamp the request, record the request in a logbook, compute the day that the five business day response period expires and make a notation of that date on the request;
- (ii) initiate a thorough search for the records requested and determine whether they are public records as provided under the Right-to-Know Law; and
- (iii) prepare, review, sign, mail and log a written response.

2. Grant of Request for Records

A. If the County Open Records Officer determines that some or all of the requested records are available, the written response shall outline the manner in which the County is complying with the request. A sample letter granting a request in whole or in part is attached as Appendix B.

B. The alternatives available to the County Open Records Officer include:

- (i) a response which includes a copy of the requested record. The County may provide records on paper, electronically through email or by other means such as digital media;
- (ii) a response notifying the Requester that the records are available through publicly-accessible electronic means such as the County's website, or another agency's website;

(iii) a response outlining information about how and when the Requester can visit the County to view and copy the records. All documents deemed public records shall be available for inspection, retrieval and duplication during regular business hours (8:00 AM – 5:00 PM) except weekends and County holidays. Any duplication shall occur at a County facility and no records may be removed from any County office except by County staff;

(iv) a response indicating that the requested records are available upon payment of applicable fees. Specifically, if the cost of complying with the request exceeds \$100, the County Open Records Officer or a departmental designee may collect these costs before delivery of the records; and

(v) if the records are electronic, a response indicating that the records are available for computer viewing and duplication.

C. If the Requester fails to retrieve the requested records within sixty (60) days of the County's response, the County may dispose of any copies which have not been retrieved by the Requester and retain any fees paid to date.

3. Denial of Request for Public Records

A. If the County Open Records Officer determines that a request for records should be denied, in whole or in part, the denial shall be issued in writing. A sample letter denying a request in whole or in part is attached as Appendix C. The denial letter 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 signature and contact information for County Open Records Officer;

(iv) the date of the response; and

(v) the procedure to appeal the denial.

4. Extension of Time to Respond to Records Request

A. The County Open Records Officer or a departmental designee may respond to the Requester by indicating that the County will be taking additional time (not exceeding thirty (30) calendar days) to respond, if such time is necessary because:

(i) the request for access requires redaction of a public record due to the existence of confidential, proprietary, or otherwise restricted or protected information;

- (ii) the request for access requires retrieval of a record stored in a remote location;
- (iii) a timely response to the request for access cannot be accomplished due to bona fide and specified staff limitations;
- (iv) a legal review of the request is necessary to determine whether the record is a public record subject to access under the Right-to-Know Law;
- (v) the person or entity requesting access to the public record has not complied with the County's policies regarding access to public records;
- (vi) the person requesting access to the record refuses to pay applicable fees as contained herein; or
- (vii) the extent or nature of the request precludes a response within the required time period.

B. Unless agreed upon by all parties, a response beyond 30 days is a deemed denial of the request.

5. Fees

A. The County shall follow as closely as possible the fee schedule adopted by the Pennsylvania Office of Open Records. Notwithstanding this fee schedule, the following fees shall be applicable to requests for access to public records:

- (i) standard size photocopying fees - (\$0.25) twenty-five cents per page;
- (ii) certification of a public record - (\$1.00) one dollar per record certified;
- (iii) facsimile/microfiche/other media - actual cost established by County Department;
- (iv) copying records onto electronic media - actual cost established by County Department;
- (v) specialized documents (for example, blue prints, color copies, non-standard sized documents) - actual cost established by County Department;
- (vi) conversion to paper - if a record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media unless the Requester specifically requests for the record to be duplicated in the more expensive medium;

(vii) postage fees - actual cost; and

(viii) redaction fee - no redaction fee will be imposed.

B. The above list is not exhaustive. Additional fees may apply for specialized printing or copying. Prior to printing or copying any such the record, the County will inform the person or entity requesting access to the record of the projected costs. The County, in its sole discretion, may waive the fees for duplication of public records if the County determines that it is in the public interest to do so.

APPEALS

1. Appealing the County's Response

A. The Right-to-Know Law provides an appeal process through the Pennsylvania Office of Open Records or the Office of the District Attorney of Berks County.

B. Except in the case of criminal investigative records, if a Requester wishes to dispute the denial of a request, the Requester must notify the Pennsylvania Office of Open Records in writing of his/her desire to appeal the decision. The Requester's appeal must state the grounds upon which the Requester asserts that the record is a public record and must address any grounds stated by the County for delaying or denying the request. The appeal shall be sent to the following address:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225

C. Denials of requests for criminal investigative records in possession of the County must be directed to the Appeals Officer with the Office of the District Attorney of Berks County. The Appeals Officer is designated by the District Attorney and shall determine if the record requested is a criminal investigative record. The Requester's appeal must state the grounds upon which the Requester asserts that the record is a public record and must address any grounds stated by the County for delaying or denying the request.

D. The appeal must be mailed within fifteen (15) business days of the mailing date indicated on the County's response, or if no response is provided then within fifteen (15) business days of the date the request is deemed to be denied.

E. Unless the Requester agrees otherwise to the timing, the Appeals Officer will make a final determination within thirty (30) calendar days of the date the appeal is mailed. Prior to issuing its determination, the Appeals Officer may conduct a hearing. The Appeals Officer will provide a written explanation of the reason for the decision to the Requester and the County.

If the Appeals Officer fails to issue a final determination within 30 calendar days, the appeal is deemed denied.

Appendix A

Sample

DATE RECEIVED: _____

RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: _____

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTER : _____

STREET ADDRESS : _____

CITY/STATE/ZIPCODE/COUNTY : _____

TELEPHONE (Optional): _____

E-MAIL (Optional): _____

RECORDS REQUESTED:

**Provide as much specific detail as possible so the agency can identify the information.*

DO YOU WANT COPIES? YES or NO

DO YOU WANT TO INSPECT THE RECORDS? YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO

OPEN RECORDS OFFICER: _____

DATE RECEIVED BY THE AGENCY:

Appendix B

Sample

Date _____
Citizen Name _____
Address _____

Dear **[Citizen]**,

Thank you for writing to **[Public Body]** with your request for information pursuant to the Pennsylvania Right-To-Know law.

On **[date received by agency]**, you requested **[description of information requested, or restate their request]**. Your request is granted in part and denied in part as follows. Your documents are enclosed.

However, the **[Agency]** has withheld information that is exempt from disclosure by law. We redacted **[Describe redacted information: Examples....social security number, academic transcripts, medical information, or other exemptions]** as outlined in Section 708(b).

This information is exempt from disclosure under **[CITE applicable section of the law. If precluded from release by other state or federal law, rule or regulation, you must cite to that legal authority.]**

You have a right to appeal this denial of information in writing to the Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

[For Criminal Records] to the Berks County District Attorney, Open Records Appeals Office, 5th Floor Services Center, 633 Court Street SC, Reading, PA 19601.

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. If you have further questions, please call **[Open Records Officer]**. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

Berks County Open Records Officer
13th Floor Services Center
633 Court Street SC
Reading, PA 19601
Phone: 610-478-6136

Appendix C

Sample

Date _____

Citizen Name
Address
Telephone Number

Dear [**Citizen**],

Thank you for writing to [**Public Body**] with your request for information pursuant to the Pennsylvania Right-To-Know law.

On [**Date received by agency**], you requested [**Describe information requested, or restate their request**]. Your request is denied for the following reasons, as permitted by Section 706 of the Act.

The [**Agency**] has denied your request because [**describe specific type of information, such as medical records, academic transcripts or other exemption items**] is exempt from disclosure. [**Must cite applicable section of the RTK law. If precluded from release by some other state or federal law, rule or regulation, you must cite that legal authority.**]

You have a right to appeal this denial of information in writing to Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

[**For Criminal Records**] appeal to the Berks County District Attorney, Open Records to Appeals Office, 5th Floor Services Center, 633 Court Street SC, Reading, PA 19601.

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. If you have further questions, please call [**Open Records Officer**]. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

Berks County Open Records Officer
13th Floor Services Center
633 Court Street SC
Reading, PA 19601
Phone: 610-478-6136