

**YORK HAVEN BOROUGH
YORK COUNTY, PENNSYLVANIA**

RESOLUTION NO. 2017-4

**A RESOLUTION OF YORK HAVEN BOROUGH, ADOPTING POLICIES AND
PROCEDURES RELATING TO REQUESTS FOR PUBLIC RECORDS AND
COMPLYING WITH THE RIGHT-TO-KNOW LAW**

WHEREAS, York Haven Borough, is a political subdivision, and is an agency as defined by Act 3 of 2008, which amended and created the new Right-to-Know Law (the "Law"); and

WHEREAS, Section 504 of the Law authorizes such agencies to establish written regulations and policies necessary to implement the Law; and

WHEREAS, York Haven Borough Council desires to do so in accordance with the Law.

NOW, THEREFORE, BE IT RESOLVED, and it is hereby resolved by York Haven Borough Council as follows:

SECTION 1: York Haven Borough hereby adopts the Policy attached hereto, marked Exhibit "A", and incorporated by reference, relating to and regulating all requests for records by the public.

SECTION 2: This Resolution shall be effective immediately.

DULY ADOPTED, by York Haven Borough Council, this 5th day of September, 2017.

Attest:

York Haven Borough

Secretary

By: _____

President

Signed copy available at the York Haven Borough Office.

Policy Title: Right-to-Know Law
Effective Date: September 5, 2017

PURPOSE

York Haven Borough (the “Borough”), is an agency and subject by the Right-to-Know Law, as established by Act 3 of 2008 (the “Act”). The Right-to-Know Law and Act may be referred to collectively the “Law”. The Borough is authorized to establish a written policy, which must be posted or available to aid in implementation of the Law. This policy replaces any prior policy of the Borough and is effective as of September 5, 2017.

POLICY

The following will provide guidance for York Haven Borough Council and employees on how to efficiently and effectively process requests made for public records as governed by the Law.

Section 1. Open Records Officer.

- A. Each year at the first meeting that shall occur in a calendar year, the Borough Council shall appoint an Open Records Officer. This Officer shall be responsible for processing, recording, tracking and otherwise administering all portions of this policy, as well as any policy or procedure that may provide direction for the retention of documents and the destruction of documents of the Borough.
- B. Borough shall make available the identity and manner of communication to the Open Records Officer and post said information at a conspicuous location at the Borough Office.
- C. In the event an Open Records request is submitted to an employee other than the Open Records Officer, that person must immediately provide the request to the Open Records Officer. All employees should refrain from accepting Open Records Requests and direct all such requests to the Open Records Officer.
- D. Duties of the Open Records Officer:
 1. The Open Records Officer shall receive requests submitted to the Borough under the Law, direct requests to other appropriate persons within the Borough or to appropriate persons in another agency, track the Borough’s progress in responding to requests and issues interim and final responses under the Law.
 2. Upon receiving a request for a public record, legislative record or financial record, the Open Records Officer shall do all of the following:
 - (i) Stamp the date of receipt on the written request.
 - (ii) Compute the day on which the five-day response period under Section 901 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.

(iv) If the request is denied, the written request shall be maintained for 30 days.

(v) If an appeal is filed, keep the records until a final determination is issued under section 1101(b) or the appeal is deemed denied.

(vi) Create a file for the retention of the original request, a copy of the response and a record of written communications with the requester.

Section 2. Public Records.

A. Public Records as defined by the Law shall be provided to any legal resident of the United States, unless otherwise exempted pursuant to the Law.

B. A record shall be defined as a “Public Record” as follows:

A record including a financial record, of a Commonwealth or local agency that:

- a. is not exempt under Section 708 of the Act.
- b. is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- c. is not protected by a privilege.

C. The Borough shall not provide records that are exempted from public disclosure pursuant to Section 708(b) of the Act, regardless of whether a person or entity provides a release for such information.

D. Pursuant to Section 708(b), draft meeting minutes of the Borough may be provided to the Members, the Secretary, and the Solicitor to review. Such a dissemination of draft minutes for review for purposes of subsequent approval shall not constitute a waiver of the exemption concerning draft meeting minutes.

E. Regardless of the exemptions set forth in Section 708(b), Borough shall not provide documents or records that are privileged or protected by federal or state law or by any court order. In the event the Open Records Officer cannot determine the nature of a document with regard to privileged or other exemption, the Open Records Officer is authorized to seek guidance from the Borough Solicitor with regard to the same.

F. Borough shall individually evaluate all exemptions and apply each exemption separately for purposes of determining what documents shall be provided pursuant to the Act.

G. For purposes of this policy, the Borough shall maintain records pursuant to the time frames established pursuant to its Record Retention and Destruction procedures.

- H. Records Management Analysis. The Borough has the authority in consultation with the Pennsylvania Museum and Historical Commission to create a retention policy governing records of the Borough.

Section 3. Procedure for Requesting Records.

- A. All requests for documents must be a written request submitted on a form as prescribed by the Borough. All requests must be in a manner so that the material requested describes the records requested with specificity. Verbal requests shall not be considered official requests for purposes of the timeframes established by the Law. For purposes of defining a “written request” the Borough shall accept requests by email, facsimile, mail or in person pursuant to the regulations outlined herein. Such requests shall only be received during regular business hours of the Borough Office as posted.
- B. All requests must be submitted to the Open Records Officer. In no event shall a request be considered officially submitted until received by the Open Records Officer.
- C. Upon receipt of a written request for a public record, the Open Records Officer shall make a diligent attempt to determine whether such a request involves a public record and whether the Borough is in possession of the subject record.
- D. Borough shall not be required to create a record which does not currently exist or compile, maintain format or organize a record in a manner not maintained as of the date of the request.
- E. Borough shall follow the Open Records Law procedures for redaction when appropriate.
- F. A requester’s right of access does not include the right to remove a record from the control or supervision of the Open Record’s Officer.

Section 4. Extension of Time

- A. Borough shall respond to all requests within five business days. In instances of a voluminous request requiring a thirty day extension as provided under Section 902(a)(7) of the Act, or any other circumstances noted in Section 902 relating to an extension of time, the Borough shall advise the requester within five (5) business days of the receipt of the request of the need for additional response time. Additional time may be necessary when any of the following factors apply:

- a. Determination. Upon receipt of a written request for access, the Open Records Officer for the Borough shall determine if one of the following applies:
 1. The request for access requires redaction of a record in accordance with section 706;
 2. The request for access requires the retrieval of a record stored in a remote location;
 3. A timely response to the request for access cannot be accomplished due to bona fide and specific staffing limitations;
 4. A legal review is necessary to determine whether the record is a record subject to access under this act;
 5. The requester has not complied with the Borough's policies regarding access to records;
 6. The extent or nature of the request precludes a response within the required time period.

B. When an extension of time is necessary under the factors set forth above, the Open Records Officer shall provide the following information:

1. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason the review requires an extension, a reasonable date that a response is expected and an estimate of applicable fees.
2. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has consented in writing to an extension in excess of 30 days.
3. If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the Borough has not provided a response by that date.

Section 5. Borough Discretion. The Borough may exercise its discretion to make an otherwise exempt record accessible for inspection and copying as set forth in the Pennsylvania Open Records law, if all of the following conditions apply:

- A. Disclosure of the record is not prohibited by state or federal law or regulation or judicial order or decree;
- B. The record is not protected by a privilege
- C. A determination has been made by the Borough determining that the public interest favoring access outweighs any individual Borough or public interest that may favor restriction of access.

Section 6. Fees for Records Requests.

- A. The Borough shall adopt the fees as established by the Pennsylvania Office of Open Records and shall revise said fee schedule as the Pennsylvania Office of Open Records provides updates or additional information.
- B. In the event that a fee for the processing a request shall exceed or is reasonably believed to exceed \$100.00, the Borough shall require a pre-payment of \$100.00 in order to process said request. The Borough may specify acceptable forms of payment.

Section 7. Denial of Access. In the event that the Borough seeks to deny a request for information, in whole or in part, the denial shall be in writing and set forth the following information:

- A. a description of the request;
- B. the specific reasons for denial and the support therefore;
- C. the typed or printed name, title business address , business telephone number and signature of the open-records officer who has issued such denial;
- D. the date of the response; and
- E. the procedure to appeal said denial under the Open Records Act.

Section 8. Posting. Borough shall post the following information at the Borough Office site and maintain such information in an up-to-date format when necessary:

- A. Contact information for the Borough Open Records Officer;
- B. Contact information for the Pennsylvania Office of Open Records or other applicable appeals officer;
- C. A form that may be used to file a request;
- D. Regulations, policies and procedures of the Borough relating to the Open Records process.

Section 9. Bid Documents. Borough shall provide notice on all competitive bid forms related to Borough procurement that information within proposals, including financial information of a bidder may be provided as a public record, if appropriate pursuant to the discretion of the Open Records Officer, after a bid is awarded.

Section 10. Appeals. If a written request is denied or deemed denied, the requester may file an appeal within fifteen business days from the mailing date of the Borough response or 15 business days from a deemed denial. The exceptions shall state grounds on which the requestor asserts that the record is a public record. The requester may appeal a final determination to the Open Records Office within fifteen days of the denial. Appeals should be sent to:

Director Office of Open Records
Commonwealth Keystone Building
400 North Street, Fourth Floor
Harrisburg, Pennsylvania 17120