

# **BOROUGH OF CASTLE SHANNON POLICY GOVERNING ACCESS TO RECORDS OF THE BOROUGH**

## **PREAMBLE**

The purpose of this policy is to assure compliance with the Pennsylvania Right-to-Know Law, Act 3 of 2008, (hereinafter "the Act") by appointing a Open Records Officer for the Borough of Castle Shannon, by establishing procedures under which a requester can obtain access to a "record" kept or maintained by the Borough (or by a third party in possession of a record on behalf of the Borough) while minimizing the financial and administrative impact to the Borough with respect to the resources utilized in the receipt and processing of requests for access to public records, and by promulgating a schedule of fees for duplication of public records.

Nothing in this Policy shall be construed or interpreted in any way to limit the number of records of the Borough which may be requested or made available for inspection or to require the disclosure of the purpose or motive of any individual in requesting access to materials which are a record under the Act or the individual's intended use of the record.

## **NOTICE OF POLICY**

The following shall be physically posted at conspicuous locations throughout the Borough Building:

- Contact information for the Borough's Open Records Officer
- Contact information for the Commonwealth's Office of Open Records and applicable appeals officers under the Act
- A copy of the form to be used in requesting access to a record
- A copy of this Policy

## **POLICY GUIDELINES AND PROCEDURES**

### **1. DEFINITIONS**

All of the definitions set forth in the Act are incorporated by reference in their entirety herein. The phrase "access to a record" as used in this policy shall mean either to inspect or review the record in person or to be provided with a copy of the record in the medium requested.

## 2. **BOROUGH OPEN RECORDS OFFICER**

### A. **Appointment**

(1) Pursuant to Section 502 (a) of the Act, the duly appointed Borough Manager is hereby designated to serve as the Open Records Officer of the Borough of Castle Shannon.

(2) The Borough's Open Records Officer, with the advice and assistance of the Borough Solicitor, shall be the person within the Borough government immediately responsible for implementing the guidelines for operation of Castle Shannon Borough's policy regarding inspection of records and for assuring compliance in the first instance with the Act.

### B. **Duties of Open Records Officer**

(1) The Borough's Open Records Officer shall do all of the following:

(a) receive all requests for access to a record either (i) kept or maintained by the Borough; or (2) in the possession of a third party with whom the Borough has contracted to perform a governmental function on behalf of the Borough which directly relates to the governmental function and is not exempt under the Act;

(b) direct requests for access to a record, if needed, within a particular Borough department for review of a request and identification and retrieval of a record;

(c) track the Borough's progress in responding to requests; and

(d) issue interim and final responses to a requester regarding the grant or denial of access to the record.

(2) Upon receiving a request for access to a record, the Borough's Open Records Officer shall do all of the following:

(a) Note the date of the receipt on every written request for access to a record;

(b) Compute the day on which the five-day period under Section 901 of the Act will expire and make a notation of that date on the written request.

(c) 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 written request is denied, the written request shall be maintained for 90 days or, if an appeal is filed under the Act, until a final determination is issued under Section 1101 (b) of the Act or the appeal is denied.

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

### 3. **REQUESTS FOR ACCESS TO A PUBLIC RECORD**

#### A. **Written Requests; Use of Standard Request Form**

All requests for access to a record of the Borough shall be submitted in writing. Persons requesting access to records are encouraged to utilize the Pennsylvania Office of Public Records form entitled "STANDARD RIGHT-TO-KNOW REQUEST FORM", a copy of which is attached hereto as "Form 1."

#### B. **Method of Submission of Written Request**

A written request for access to a record may be submitted in person, by mail, by e-mail or by facsimile and must be addressed to the Borough Open Records Officer. Any written requests for access to records that are submitted directly to another Borough employee within another Borough department shall be immediately forwarded to the Borough Open Records Officer by that Borough employee; provided however, that the time period for a written response to a request for access to a record shall not commence until the Borough Open Records Officer's receipt of the written request.

#### C. **Name and Address of Requester**

All written requests for access to a public record which are not made on the STANDARD RIGHT-TO-KNOW REQUEST FORM must include the name and address to which the Borough should address its response to the request.

#### D. **Specificity of Request**

In submitting a written request for access to a public record or in filling out Form, the requester shall be specific in identifying and describing each record that he/she wishes to inspect. Failure to describe the record or records that the requester wishes to inspect with sufficient specificity shall serve as a basis for the denial of the request. A written request, however, does not need to include any explanation of the requester's reason for requesting access to the record or the intended use of the record.

#### 4. RESPONSE TO REQUESTS FOR ACCESS TO A RECORD

##### A. General Rules

(1) Upon receipt of a written request for access to a record, the Borough's Open Records Officer shall make a good faith effort to determine: (a) if the material requested is a record and, if it is a record, whether it is exempted under the Act; and (b) 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.

(2) Payment of all applicable fees shall be a condition to receiving access to the record requested.

##### B. Time Period for Response to Request

The Borough's Open Records Officer shall respond in writing to the requester within five (5) business days from the date of receipt of the written request. If the Borough's Open Records Officer does not respond within five (5) business days of receipt of the written request for access to a public record(s), the request for access to the record(s) shall be deemed to be denied.

##### C. Possible Responses to Request

The Borough's Open Records Officer may respond to a request for access to a public record within five (5) business days of receipt of the written request for access as follows: (1) written notice that the request for access to the public record is granted; or (2) written notice that the request is under review for the reasons set forth in Section 902 (a) of the Act; or (3) written notice that the request to inspect the public record has been granted in part and denied in part; or (4) written notice that the request to inspect the public record has been denied.

##### D. Response: Notice of Access Granted

(1) **Time and Manner of Access** - If access to a public record requested is granted, the record shall be made available for inspection during the regular business hours of the Borough. The Open Records Officer or his/her designee shall cooperate fully with the requester, while also taking reasonable measures to protect records from the possibility of theft and/or modification. All records made available for inspection shall be examined or inspected by a requester under the supervision of an employee designated by the Open Records Officer. Such supervision may include a requirement that the record shall be inspected or examined in the physical presence of the designated employee.

(2) **Medium for Providing Access** - A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, the record shall be provided in the medium in which it exists.

(3) **Electronic Access** – In addition to providing access to a record by personal inspection of the record, the Borough Open Record Officer may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the Borough will provide access to inspect the record by electronic means. If the requester is unwilling or unable to access the record by electronic means, the requester may, within 30 days following receipt of notification by the Borough Open Records Officer that the record is available for inspection by electronic means, submit a written request to the Borough Open Records Officer to have the record created to paper. The Borough Open Records Officer shall provide access to the record by causing the record to be printed onto paper within 5 days of the receipt of the written request for conversion of the record from an electronic form to paper; provided however, that the requester pays the applicable fee for the printing (copying) of the record.

(4) **No Obligation to Create a Record** - In no case shall the Borough be required to create a record which does not 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.

E. **Response: Notice of Request Under Review**

(1) Upon receipt of a written request for access to a public record, the Borough's Open Records Officer shall determine if one of the following conditions applies:

(a) The request for access requires redaction of a record in accordance with Section 706 of the Act; or

(b) The request for access requires retrieval of a record from a remote location; or

(c) A timely response cannot be accomplished due to staffing limitations; or

(d) A legal review by the Borough's Solicitor is necessary to determine whether the record requested is subject to access; or

(e) The requester has failed to comply with the Borough's policy and procedure requirements; or

(f) The requester refuses to pay the applicable fees; or

(g) The extent or nature of the request precludes a response within the required time period.

(2) Upon a determination that one of the factors listed in Paragraph (1) above applies, the Borough Open Records Officer shall send written notice to the requester within five business days of the request for access. The written notice shall set forth the following: (a) a statement notifying the requester that the request for access is being reviewed; (b) the reason for the review; (c) a reasonable date that a response is expected to be provided; and (d) an estimate of the applicable fees owed when the record becomes available. 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 of the Act and Paragraph B of this Policy, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice stating that the request is under review. If the requester agrees to the extension, then the request shall be deemed denied on the day following the date specified in the notice if there is no other response provided by the Borough Records Officer by that date.

F. **Response: Notice of Request Denied in Whole or Denied in Part**

(1) **Denial in Writing** - If the Borough Open Records Officer's response is a denial of a written request for access to a record, whether the denial is in whole or in part, the denial shall be in writing.

(2) **Content of Written Denial** - The written notice denying the request shall set forth the following: (a) a description of the record(s) requested; (b) the specific reason(s) for the denial, including a citation of supporting legal authority; (c) the typed or printed name, title, business address, business telephone of the Borough Open Records Officer on whose authority the denial is issued; and (d) the date of the notice of the response denying in whole or in part the request for access.

(3) **Denial in Whole – Disruptive Requests** – As authorized by Section 506 (a) (1) of the Act, a written request for access to a record can be denied if the requester had made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Borough.

(4) **Denial in Whole – Disaster or Damage** - As authorized by Section 506 (b) (1) of the Act, a written request for access to a record can be denied (i) when timely access is not possible due to fire, flood or other disaster; or (ii) when access may, in the professional judgment of the curator or custodian, cause physical damage or irreparable harm to records consisting of historical, ancient or rare documents, records, archives and manuscripts.

(5) **Denial in Part due to Redactions** – As authorized by Section 706 of the Act, the Borough reserves the right to redact any and all information from a record

that is not subject to access. Information which the Borough redacts in accordance with the Act shall be deemed a denial of access to the redacted information.

(6) **Denial in Whole or in Part – Exemptions** – The Borough reserves the right to deny access to a record in whole or in part where the record or any part is exempt from access under Section 708 (b) of the Act; provided however, that the Borough shall bear the burden of proving that the record or part thereof is exempt from access.

## 5. **APPEAL OF DENIALS OF REQUESTS FOR ACCESS TO A RECORD**

If a written request for access to a record is denied, whether in whole or in part, or is deemed denied, the requester may file an appeal with the Commonwealth's Office of Open Records and thereafter with the Allegheny County Court of Common Pleas as provided by Section 1101 and 1302 of the Act.

## 6. **FEES AND CHARGES**

### A. **Payment of All Applicable Fees**

Payment of all applicable fees shall be a condition to receiving access to the record requested. (See Section 4 above).

### B. **Incorporation of Office of Open Records Fee Structure**

Section 1307 of the Act requires the Commonwealth's Office of Open Records to establish a fee structure for Commonwealth Agencies and Local Agencies. The Borough of Castle Shannon is a local agency under the Act. The fee structure established by the Commonwealth's Office of Open Records for Local Agencies is incorporated by reference in its entirety herein and attached hereto as Exhibit "A." The fee structure established by the Commonwealth's Office of Open Records for Local Agencies also can be reviewed at <http://openrecords.state.pa.us>.

### C. **Prepayment of Estimated Fees**

In the event the estimated cost of fulfilling a request to duplicate records submitted under this Policy is expected to exceed \$100.00, the Borough's Open Records Officer or the Officer's designate shall obtain fifty percent (50%) of the expected cost in advance of fulfilling the request to avoid unwarranted expense of Borough resources.

## 7. **AUTHORITY**

This Policy is being implemented pursuant to authority granted by Section 504 (a) of the Act and pursuant to resolution <sup>4</sup> adopted by the Castle Shannon Borough Council on January 26, 2009 *an action of Council.*

8. **EFFECTIVE DATE**

This Policy shall enter into effect on January 26, 2009.



**pennsylvania**  
OFFICE OF OPEN RECORDS

**Fee Structure**

Section 1307 of the Right-To-Know law requires the Office of Open Records to establish a fee structure for Commonwealth Agencies and Local Agencies. To promote uniformity among all agencies, the Office of Open Records encourages Judicial and Legislative agencies, which can set their own fees, to adopt the following fee structure. All agencies are advised that duplication fees can be waived.

The Office of Open Records establishes the following fee structure in accordance with the law.

**Fee Structure**

**Record Type**

**Fee**

Between .10 per page to a maximum .25 per page.

**Copies:**

*(A "photocopy" is either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5" x 11" page)*

An agency may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record. The Office of Open Records recommends no more than \$5 per record to certify a public record. Please note that certification fees do not include notarization fees.

**Certification of a Record:**

**Specialized documents: For**

Actual Cost

example, but not limited to, blue prints, color copies, non-standard sized documents

**Facsimile/Microfiche/Other Media:**

Actual Cost

**Redaction Fee:**

No Redaction Fee May be Imposed

**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. (Sec. 1307(e)).

**Postage Fees:**

Fees for Postage May Not Exceed the Actual Cost of Mailing

**Please Also Be Advised:**

- **Statutory Fees:** If a separate statute authorizes an agency to charge a set amount for a certain type of record, the agency may charge no more than that statutory amount. For example, a Recorder of Deeds may charge a copy fee of 50 cents per uncertified page and \$1.50 per certified page under 42 P.S. § 21051. Police departments have the authority to charge up to \$15 per report for providing a copy of a vehicle accident report. 75 Pa.C.S. §3751 (b)(2). Philadelphia police may charge up to \$25 per copy. *Id.* at (b)(3). State police are authorized to charge "\$5 for each copy of the Pennsylvania State Police full report of investigation." 75 Pa.C.S. §1956(b).
- **Inspection of Redacted Records:** If a requester wishes to inspect rather than receive a copy of a record and the record contains both public and non-public information, the agency shall redact the non-public information. An agency may not charge the requester for the redaction. However, the Agency may charge for the copies it must make of the redacted material in order for the requester to view the public record. The fee structure outlined above will apply. If, after inspecting the records, the requester chooses to obtain the copies, no additional fee may be charged.

- **Enhanced Electronic Access:** If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester, the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by this Act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. **The user fees for enhanced electronic access must be reasonable, must be pre-approved by the Office of Open Records and shall not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency.** Please submit any request to the Office of Open Records, 400 North Street, Harrisburg, PA. 17120.
- **Fee Limitations:** Except as otherwise provided by statute, the law states that **no other fees may be imposed** unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this Act. No fee may be charged for searching for or retrieval of documents. An agency may not charge staff time or salary for complying with a RTK request.
- **Prepayment:** Prior to granting a request for access in accordance with this Act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100.
  - Once the request is fulfilled and prepared for release, the Office of Open Records recommends that the agency obtain the cost of the records prior to releasing the records. This recommendation is designed to avoid situations in which the agency provides the records and the requester fails to submit payment.