

COUNTY OF DELAWARE
OPEN RECORDS LAW
POLICIES AND PROCEDURES

Originally adopted June 17, 2003 and amended September 9, 2008

- 1. BACKGROUND.** Act 3 of 2008 commonly known as the "Open Records Law" fundamentally changes the "Right-to-Know Law" by mandating a presumption of disclosure and shifting the burden of denial to the government, with those and other provisions of the new law to be effective January 1, 2009. The Delaware County Council (hereinafter "County Council") embraces these reforms and wishes to implement these changes immediately. The Open Records Law substantially amended the Act of June 21, 1957 (P. L. 390, No. 212), and Act 2002-50 (P. L. 663, No. 50), 65 P. S. §§ 66.1-66.9, commonly referred to as the "Right-to-Know Law," and therefore requires the County to amend these policies and procedures to allow early implementation of the Open Records Law.¹
- 2. DEFINITIONS.**

 - a. Act or Open Records Law.** The Act of June 21, 1957 (P. L. 390, No. 212), as amended by Act 2002-50, 65 P.S. §§ 66.1-66.9, commonly referred to as the "Right to-Know Law," and, Act 3 of 2008, commonly referred to as the "Open Records Law".
 - b. County.** The County of Delaware, Pennsylvania.
 - c. County Office(s).** Any office of the legislative and/or executive branch of the government of the County of Delaware no matter where physically located, and whether headed by an appointed or an elected official, except for the following: the District Attorney; the Office of the Recorder of Deeds; the Office of Judicial Support; the Register of Wills; the Office of the Sheriff; Voter Registration Commission and Office, and, the Election Board and Election Bureau.

¹ Because appeals are to be heard by the state and fees are to be set by the state and the state office is not yet functioning, the County will need to retain its own appeals office and keep its own fee schedule until January 1, 2009.

d. Deemed Denied. A request is deemed denied if one of the following conditions occurs: (i) the Open Records Office receiving a written Open Records Request fails to respond within the initial 5-business-day period; (ii) the Open Records Office extends the 5-business-day period by up to 30-calendar-days, but then fails to respond by the end of that extended period; or (iii) the Open Records Office notifies the Requester that it requires additional time to respond in excess of the permitted 30-calendar-day period.

e. Exceptions. A written administrative appeal filed with the Open Records Exceptions Office by a Requester challenging the Open Records Office's denial or deemed denial of the Requester's Open Records Request.

f. Mailing date. The date affixed to a response to a request For access to records, which is to be the date the response is deposited in the United States Mail or, for a person submitting a request or exceptions, the date of the postmark on the envelope transmitting the request or exceptions.

g. Open Records Exceptions Official. Any official or employee designated by the County Council to consider Exceptions, conduct hearings, as appropriate, and issue final determinations resolving those Exceptions.

h. Open Records Exceptions Office. The office designated by the County Council to receive and docket Exceptions filed by Requesters and to provide administrative support for the Open Records Exceptions Official.

i. Open Records Office. The office(s) designated by the County Council to receive Open Records Requests.

j. Open Records Official. Any official or employee designated by the County Council to receive Open Records Requests.

k. Open Records Request. Either (i) a written request submitted to the Open Records Office or Open Records Official asking for access to a Record, a copy of a Record or information purported to be in the possession of the County; or (ii) a written

request (but not Exceptions or appeal) presented to the Open Records Office that invokes the Act.

l. Public Record. Any document that satisfies the general definition of "public record" set forth in the Act and does not fall within any of the exceptions set forth therein, as the definition and exceptions are amended from time to time and as the definition and exceptions are interpreted by state, federal and/or local courts.

m. Record. Any document maintained by the County, in any form, whether public or not.

n. Requester. A person who requests a record pursuant to the Open Records Law.

o. Response. The Open Records Office's reply to a request made pursuant to the Act. A Response may be either (i) the act of providing the Requester with access to a record, or (ii) the Open Records Office's written notice granting, denying or partially granting and partially denying access to a record.

p. Solicitor. Office of the County Solicitor of Delaware County.

3. FUNCTIONS.

a. Open Records Office. The function of the Open Records Office is to receive all Open Records Requests directed to any County office; to coordinate the preparation of a Response; to track the progress in responding to Open Records Requests; and, to prepare and issue Responses to Open Records Requests.

b. Open Records Official. Pursuant to the Act, the County Council shall designate an official or employee of the County as the County's Open Records Official responsible for receiving, tracking, and responding to Open Records Requests. In the absence or unavailability of the Open Records Official, an employee of the Open Records Office may act as the Deputy Open Records Official.

c. Public Records Access Room. The function of a Public Records Access Room is to provide a specific, established site

where Requesters may have physical access to some or all of the County's Public Records. If the County Council elects not to establish such a room, the Open Records Official shall determine on an ad hoc basis the building and room where Public Records will be made available to a Requester and the hours of availability. In either instance the Open Records Official has the discretion to establish written policies governing the use of that room including, but not limited to, the hours of access, the need and adequacy of proof of identification, restrictions or prohibitions on the removal of Records, the use of written requests and the ability of a Requester to bring his or her own photocopying or other equipment into the room.

d. Open Records Exceptions Official. The function of an Open Records Exceptions Official is to adjudicate Open Records Exceptions; to preside at hearings (if and when hearings are convened); and, to issue final determinations in accordance with the Act.

4. PROCEDURE.

a. Requests.

(1) Oral requests. The Act does not require that the County respond to oral requests. Each County Office and the Open Records Official shall refuse to accept any oral request.

(2) Anonymous requests. The Act does not require that the County respond to Anonymous requests. Each County Office and the Open Records Official shall refuse to accept any written request that does not identify the Requester.

(3) Non-anonymous written requests. The Act requires that the County act upon each non-anonymous written request when such request is submitted in person, by mail, or by facsimile or e-mail. Requests submitted by an electronic method (e-mail) or by facsimile are permitted by the Act.

(i) Contents of a request. The Act sets forth various specifications for the contents of a written request. Thus, the request must include the name of the Requester and the address to which the County should address its Response. The request should

identify or describe the Records sought with sufficient specificity to enable the County to ascertain which Records are being requested.

Reason for the request. The Act provides that the Requester need not include the reason for the request or the intended use of the Records. Therefore, the County shall not insist that such a statement be provided, nor shall it reject or refuse a request on the grounds that no such reason was given.

(ii) **Forms.** The County may create or adopt forms for use by Requesters in preparing written requests.

(4) Citizenship requirement. The Act provides that the County provide a Requester with access to a Public Record if the Requester is a citizen of the United States. The County may require that the Requester produce photographic identification, to determine proof of citizenship.

b. Submittal of Open Records Requests.

(1) The Office of the County Clerk is the office designated by the County Council as the recipient of all Open Records Requests addressed to the County. All Open Records Requests are to be addressed to:

Office of the County Clerk
County of Delaware
Government Center Building Room 206
201 West Front Street
Media, PA 19063
(610) 891-4260 (telephone)
(610)891-8759(facsimile)
OpenRecords@co.delaware.pa.us (e-mail)

The County shall post this information to its website and shall post it at a location that is publicly accessible.

(2) The five (5) business day period does not begin to run until the County's designated Open Records Office has received a request. If an Open Records Request is submitted to a County Office or to some official or employee of the County other than the Open Records Official or an employee

assigned to the Open Records Office, the five (5) business day period has not yet begun.

c. County's Duty to Provide a Prompt Response to an Open Records Request.

- (1) Five (5) business-day period.** Section 3.3(a) of the Act provides that, upon receipt of a written Open Records Request, the County must make a good faith effort to determine if the requested Record is a Public Record and to respond as promptly as possible under the circumstances existing at the time of the request, and that this time shall not exceed five (5) business days from the date the written request is received by the County's Open Records Official. The Act provides that either a final or an interim written response must be made within five (5) business days from the date that the Open Records Official received the request. If the Open Records Office fails to respond within that time period, the Open Records Request is Deemed Denied.

- (2) 30-calendar-day extension period.** Although, in general, the Act and this Policy contemplates that Requesters will receive a Response within the five (5) business day period, it also provides The County with certain specific exceptions to invoke a single extension of time, which may not exceed 30 calendar days. If an extension is invoked and then there is no timely Response, the Open Records Request is Deemed Denied. Likewise, if the Open Records Office notifies the Requester that it needs more than the maximum of 30 days, the request is Deemed Denied.

d. Processing of Open Records Requests by the Open Records Office.

- (1)** Upon receiving an Open Records Request, the Open Records Office shall, at a minimum, promptly complete the following tasks:
 - (a)** Date-stamp the Open Records Request.
 - (b)** Assign a tracking number to the Open Records Request.

- (c) Compute the day on which the five (5) business day period will expire and make a notation of that date.
 - (d) Make a paper copy of the Open Records Request, including all documents submitted with it and the envelope (if any) in which it was received.
 - (e) Create an official file for the retention of the original Open Records Request.
 - (f) Record the Open Records Request in the system used by the County for tracking Open Records Requests.
- (2) For purposes of determining the five (5) business-day period:
- (a) A business day shall be from 9:00 a.m. until 4:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday, except those days when the offices of the County are closed for all or part of a day due to a holiday; due to severe weather (such as a blizzard or ice storm); due to natural or other disaster; or due to the request or direction of local, state, or federal law enforcement officials.
 - (b) Any Open Records Request received by the Open Records Office after the close of its regular business hours shall be deemed received by that office on the following business day. Thus, for example, a facsimile transmission received at 6:00 p.m. on a Friday is deemed to be received on the following Monday (unless that Monday is a holiday).
 - (c) For purposes of determining the end of the five (5) business day period, the day that an Open Records Request is received (or deemed received) is not counted. The first day of the five (5) business day period is the County's next business day. For example, if an Open Records Request is received on a Tuesday, the first three days of the period are Wednesday, Thursday, and Friday. The fourth and fifth business days would be Monday and Tuesday of

the following week. The Response is due by the close of business on that Tuesday.

e. Responses.

- (1) The act of providing a Requester with physical access to a document or a copy of the requested Record, in the Open Records Office, is a "Response" for purposes of this Open Records Policy. Unless the County issues written policies to the contrary, only the Open Records Official possesses the authority to permit this access.
- (2) Where timely access is not provided in accordance with (1), the Act requires that the County's Response be in writing. The Open Records Official has the duty to prepare and send written Responses. In preparing a written Response, the Open Records Official may consult, as necessary, with the Solicitor, and other County officials and employees having control, knowledge or concern of the Records.
- (3) The County is not required to create a Public Record that does not already exist, nor is the County required to compile, maintain, format, or organize a Public Record in a manner in which the County does not currently do so.
- (4) The Open Records Office shall send written Responses to Requesters by one of the following, in its discretion: United States mail, facsimile transmission; electronic transmission; overnight or parcel delivery service; or, courier delivery.

f. Physical Access to Public Records.

- (1) The Act requires that, unless otherwise provided by law, the Public Records of the County must be accessible for inspection by any Requester during the regular business hours of the County. Unless the County adopts written policies to the contrary, the regular business hours of the County for purposes of the Act are from 9:00 a.m. until 4:00 p.m. on any business day.
- (2) Access shall be provided by the Open Records Official either in the Open Records Office or the Public Records Access Room, at the discretion of the Open Records Official,

depending on the size, complexity or other circumstances of the request.

g. Interim Written Responses.

- (1) The Act requires that the County must provide a Response to a Open Records Request within five (5) business days unless one or more specific conditions are satisfied and the County gives the Requester written notice that additional time will be required. That notice is referred to as an "interim Response."
- (2) The circumstances in which the County may obtain an extension of time in which to provide a final Response are set forth in the Open Records Law.

i. Written Final Responses.

- (1) **Types of final Responses.** The Act provides for three types of written final Responses:
 - (a) The County grants the entire Open Records Request.
 - (b) The County refuses the entire Open Records Request.
 - (c) The County grants part of the Open Records Request and refuses the remainder.
- (2) **Deemed Denials.** The failure of the County to make a timely final Response is a Deemed Denial under the terms of the Act.
- (3) **Final Responses that deny Open Records Requests, either in whole or in part.**
 - (a) A Response that denies an Open Records Request (either in whole or in part) shall list all of the specific reasons relied upon by the County for denying the Open Records Request and shall include one or more citations of supporting authority.

(b) In the event that the County's Response is a denial or a partial denial, the Response shall also contain a notice informing the Requester of his or her right to file Exceptions, and shall set forth the name and mailing address of the Open Records Exceptions Office.

(c) Inaction by the County is not a Response, even when it results in a Deemed Denial.

j. Redaction.

- (1) "Redaction" means the eradication of a portion of a record while retaining the remainder.
- (2) Method. A Record shall be redacted when parts of the Record are not Public Record or are protected and shall not be disclosed as set forth in the Act. Redaction shall be performed in such a way as to maintain the confidentiality or security of the protected information. Thus, for instance, merely crossing out text usually does not suffice if the underlying words can be made out by careful examination. An example of effective redaction is to create a photocopy of an existing document; to completely obliterate the selected text using a black marker; and to photocopy that document (so that the obliterated text on the first copy cannot be read through the marker ink). Other techniques may also be used. In complying with the Open Records Law's redaction requirements, The County is not required to alter their original records.

k. Duplication of Public Records.

(1) A Public Record shall be accessible for duplication by a Requester. The County does not make duplication equipment available to a Requester but shall provide other means by which a Requester may obtain copies, through County personnel.

(2) The County will assign its own staff to make the duplications requested by the Requester; or it may contract for duplication services and require that the Requester pay the contractor for those services. The County shall charge the Requester a reasonable fee(s) that is consistent with the prevailing charges in

the geographic location where the duplication occurs. Resolution of County Council shall establish such fees from time to time.

5. EXCEPTIONS.

a. Right to file Exceptions.

- (1)** If a Request is denied or Deemed Denied, whether in whole or in part, the Requester has the right to file Exceptions with the Open Records Exceptions Office.
- (2)** An individual who makes either an oral request or an anonymous request lacks standing to file Exceptions. Any Exceptions filed by such individual shall be dismissed for that reason.
- (3)** There is no right to file Exceptions to an interim decision to extend the response period by up to 30 days.

b. Filing procedures.

The County's Open Records Exceptions Office shall follow the following process for handling Exceptions. This process shall include the following steps:

- (1)** Date-stamp the Exceptions letter and assign it a tracking number.
- (2)** Retain the envelope and any documents that accompany the Exceptions letter.
- (3)** Send a copy of these materials to the Solicitor's Office.
- (4)** Schedule and conduct hearings, if necessary.
- (5)** Obtain the services of a court reporter or other method for recording testimony, if a hearing is ordered.
- (6)** Docket the receipt of evidence and other submittals.
- (7)** Maintain a record of the final determinations.

- (8) Prepare an official record in the event of an appeal to the Court of Common Pleas.

c. Time for filing Exceptions.

- (1) Exceptions to the Open Records Office's written denial must be filed within 15 business days of the mailing date of the written denial.
- (2) Exceptions to a Deemed Denial must be filed within 15 calendar days of the date the request is deemed denied.
- (3) Exceptions that are untimely filed may be dismissed for that reason.

d. Contents of Exceptions.

- (1) Exceptions must state the reasons upon which the Requester asserts that the Record is a Public Record. Reasons not set forth in writing within the applicable 15-day period are deemed to be waived and may be disregarded by the Open Records Exceptions Office.
- (2) Exceptions should address the reasons stated for denying the request. Exceptions that fail to comply with this requirement may be dismissed for that reason.

e. Submission of written exceptions to the Open Records Exceptions Office.

Exceptions shall be set forth in writing and shall be correctly addressed and submitted to the County's Open Records Exceptions Official. The County's Open Records Exceptions Official's address is:

Right to Know Law Exceptions Official
County of Delaware
Government Center Building Room 202
201 West Front Street
Media, PA 19063

(610) 891-4453 (telephone)
(610) 891-0647 (facsimile)

Exceptions submitted to any other official, office, or address are defective and do not stop the running of the 15-day Exceptions period.

f. Method of submission.

(1) United States mail. Exceptions may be submitted through the U. S. mail. The mailing date shall be the date of the postmark on the envelope. If the postmark is illegible, the mailing date is deemed to be the calendar day that immediately precedes the date on which the Exceptions are received, unless that immediately preceding day is a Sunday or a federal holiday.

(2) Submission using other means. If Exceptions are filed in person, by facsimile transmission, by courier service, by overnight or parcel delivery service, or in any way other than by sending them through the United States mail, the mailing date is deemed to be the date the Exceptions are received by the Open Records Exceptions Office, except that Exceptions received by the Open Records Exceptions Office after the close of the usual business hours of that office are deemed to be received on the next business day.

(3) Submission by electronic transmission (e-mail) is not permitted. Requesters are prohibited from submitting exceptions through the use of electronic transmission (e-mail).

g. Consideration of Exceptions

(1) Exceptions contesting Deemed Denials. In the event an Open Records Request is denied due to a Deemed Denial, a Requester is not required to set forth any grounds for contesting the denial. The Open Records Exceptions Official shall consider the cases for both the Requester and the County.

(2) The Exceptions Period. Unless the Requester agrees otherwise, when a Requester files Exceptions to a denial, the Open Records Exceptions Official must issue a "final determination" within 30 calendar days of the mailing date of the

Exceptions. If the Requester requests a hearing, the Open Record Exceptions Official may condition the grant of that request upon the Requester's written consent or agreement to an extension of the Exceptions Period.

(3) The "final determination." Exceptions are resolved by a "final determination" which is the final order of the Open Records Exceptions Official. A final determination must be set forth in writing. If the Open Records Exceptions Official determines that the Open Records Office correctly denied the request for access, he or she must provide a written explanation to the Requester of the reason for the denial. This written determination must be mailed to the Requester by the last day of the Exceptions Period.

(4) Hearings. The Act permits the Open Records Exceptions Official to conduct a hearing, but does not require that it do so. Either party (Requester or County) may request that a hearing be held. The decision to hold a hearing rests in the discretion of the Open Records Exceptions Official and is not appealable.

(5) Rules of evidence and proof of the nature or contents of a withheld document.

(a) The Open Records Exceptions Official presiding at the hearing shall have the discretion to admit into evidence such testimony, evidence, and documents as are found to be reasonably probative and relevant to an issue in dispute. The presiding official may also limit the nature and extent of evidence found to be cumulative. Formal rules of evidence shall not apply.

(b) The Act does not provide for an *in camera* examination of a withheld Record. Consequently, where the County denies access to a Record, that document may not be submitted to the Open Records Exceptions Official for his or her consideration. Rather, the County should provide a description of the Record, either in writing or by means of oral testimony. Where the document is set forth on a form, a copy of the blank form may also be submitted. The County shall not be compelled to produce a withheld Record.

(c) Unless it is presented to the Open Records Exceptions Official, no withheld Record shall become a part of the official record of the Exception

(6) Timing of hearings and submittals. The Open Records Exceptions Official may set a schedule for the parties to submit documents in support of their respective positions. The Open Records Exceptions Official may also impose reasonable limits on the nature and type of documents to be submitted. Where a hearing will be conducted, the Open Records Exceptions Official should schedule it promptly.

(7) Rules of procedure.

(a) When Exceptions are to be resolved without a hearing, the Local Agency Law does not apply.

(b) The Open Records Exceptions Official has the discretion to develop procedural rules, if any. These rules shall be published as part of The County's written policies.

(3) In the absence of an applicable rule or written policy governing Exceptions procedure, the Open Records Exceptions Official shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute.

6. APPEALS TO COURT OF COMMON PLEAS .

Where the Open Records Exceptions Official's final determination upholds the refusal of access to a Record, the Requester may, within 30 days of the mailing date of that final determination, file an appeal in the Delaware County Court of Common Pleas.

7. RETENTION AND DISPOSAL OF PUBLIC RECORDS.

There are statutes, regulations and other laws that regulate the County's retention and disposition of Records. The County shall follow the mandates of these laws and regulations. Neither the Act nor this policy modifies, rescinds or supersedes any retention or disposition schedule established pursuant to law or other regulation.

8. WRITTEN POLICIES AND REGULATIONS.

The County, the Open Records Official and the Open Records Exceptions Official each have the discretion to adopt any other written polices consistent with the Act and these Policies and Procedures, as amended from time to time, that they deem to be necessary or prudent, consistent with the Open Records Law. Thus, for example, written policies can be adopted governing the manner in which access to records will be provided, the need and adequacy of proof of identification, restrictions or prohibitions on the removal of records, the availability of County duplicating equipment and associated staff, and the ability of a Requester to bring his or her own photocopying or other equipment into the offices of the County.

9. FEES AND CHARGES.

(a) Fees and charges as permitted by the Act are hereby established by the Fee Schedule attached as Schedule A and may be amended by County Council from time to time as appropriate, using the standards provided in the Act.

(b) The Act requires that, in various circumstances, the County shall redact information from records. The Act provides that additional fees may be imposed if the County necessarily incurs costs for complying with a request. However, such fees must be reasonable. The Open Records Official may establish such fees, depending upon the volume and complexity of the Records requested.

(c) The County may, in its discretion, insist that payment be made by certified check. In the alternative, the County may insist that a personal or business account check must first have cleared. If the fee is for copying only, the County may allow access to the Records but shall refuse to make copies until the fee is paid. If the fee is for redaction or some other service that is necessary in order for access to be provided, the County may deny access until the fee is paid.
