

**BOROUGH OF BOWMANSTOWN
CARBON COUNTY, PENNSYLVANIA**

**RESOLUTION NO. 2008- 11
(Duly Adopted September 8, 2008)**

**A RESOLUTION OF THE BOROUGH OF BOWMANSTOWN,
CARBON COUNTY, PENNSYLVANIA, ESTABLISHING A
POLICY REGARDING REQUESTS FOR PUBLIC RECORDS
PURSUANT TO THE RIGHT-TO-KNOW LAW; AND
CONTAINING CLAUSES FOR SEVERABILITY, REPEAL AND
EFFECTIVE DATE.**

WHEREAS, the Right-to-Know Law has been subsequently amended by the Act of June 29, 2002, Act No. 2002-100 as well as Act 3 of 2008 as amended February 14, 2008 which requires, among other things, that each political subdivision and each municipality in Pennsylvania adopt a policy regarding requests for public records and the copying thereof including amended definitions as well as an amended presumption(s) for records qualifying under the act; and

WHEREAS, the Borough of Bowmanstown desires to adopt a policy implementing the amended Right-to-Know Law in compliance and conformity with same.

NOW THEREFORE, BE IT ADOPTED AND RESOLVED by the Borough of Bowmanstown, and it is hereby **RESOLVED** as follows:

SECTION 1. Definitions. The following terms when used in this Resolution shall have the meanings set forth in this section unless the context clearly indicates otherwise:

“Borough” shall mean the Borough of Bowmanstown, organized and existing under the laws of the Commonwealth of Pennsylvania.

“Business day” shall mean any day other than a Saturday, Sunday, holiday or other day when the Borough’s office employees are not required to work for the Borough.

“Open-records Officer” the Borough shall designate an official or employee who will act as its open-records officer, who will receive requests, direct them as appropriate within the Borough, track the progress in responding, and issue interim and final responses to requesters. Upon receiving the request, the officer is to note the date of receipt on a written request, compute the five day period for required response and note it on the request, maintain an electronic or paper copy of the request until it has been fulfilled or until a final determination is issued on denial.

“Person” shall mean an individual and any other legal entity determined by final order of a court having jurisdiction over the Borough to be a person under the Right-to-Know Law.

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

- (1) is not exempt under section 708;
- (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 an agency 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.

"Requester" A person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency.

"Response" Access to a record or an agency's written notice to a requester granting, denying or partially granting and partially denying access to a record.

"Right-to-Know Law" shall mean the act of February 14, 2008, No. 3, as amended from time to time.

Any and other definitions not outlined herein, this Resolution incorporates by reference those definitions as outlined in the Right-to-Know Law, as amended, specifically Act 3 of 2008, as amended known as the Right-to-Know Law (also known as the Open Records Act previously identified as the Right-to-Know Law, Act of June 21, 1957, P.L. 390, No. 212, as amended June 17, 1971, P.L. 190, No. 9 as well as Act of June 29, 2002, Act. No. 2002-100 as well as the most recent amended S.B.1 or Act 3 of 2008).

SECTION 2. Procedure for Access to Public Records of the Borough.

(a) General Rule. Unless otherwise provided by law, a public record of the Borough shall be accessible for inspection and duplication by a requester in accordance with this Resolution. Pursuant to Section 305 of Act 2008-3, a record in possession of the Borough shall be presumed to be a public record. The presumption shall not apply if:

1. The record is exempt under Section 708 (by and which is incorporated herein by reference as the Right-to-Know Act);
2. The record is exempt from being disclosed under any other Federal or State law or regulations or judicial order or decree; or
3. The record is protected by privilege (privilege being defined as the attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the

speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth).

(b) The Borough shall designate an official or employee to act as its open record officer as defined under Section 1 Definitions (which terms as Open-records Officer shall be outlined as defined in the definition section).

(c) Open-records Officer in addition to those obligations outlined in the definition section shall do the following:

1. Note the date of the receipt on the written request.
2. Compute the day on which the five-day period will expire and make a notation of that date on the written request.
3. 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 30 days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.
4. 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.

(d) Written Requests. A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by Borough rules, any other electronic means. A written request must be addressed to the Open-records Officer designated pursuant to Paragraph (c). Employees of the Borough shall be directed to forward requests for records to the Open-records Officer. A written request should 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. A written request need not include any explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law.

(e) Electronic Access. The Borough may make its records available through any publicly accessible electronic means. The Borough 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 electronically. If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the Borough's notification, submit a written request to the Borough to have the record converted to paper. The Borough shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper.

(f) Creation of Record. When responding to a request for access, 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.

SECTION 3. Access to Public Records. The Borough may not deny a requester access to a public record due to the intended use of the public record by the requester.

SECTION 4. Redaction. If the Borough determines that a public record, legislative 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, legislative 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 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 5.

SECTION 5. 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, legislative record or financial 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 Open-records Officer for the Borough. 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.** 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 public record in accordance with Section 4;
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 specified 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 requester refuses to pay applicable fees authorized by this act; or

7. the extent or nature of the request precludes a response within the required time period.

(c) Notice. Upon a determination that one of the factors listed in Subsection (b) applies, the Open-records Officer shall send written notice to the requester within five business days of receipt of the request for access under Subsection (a). 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 that a response is expected to be provided and an estimate of 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 it in Section (a), 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. 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.

(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:

1. A description of the record requested;
2. The specific reasons for the denial, including a citation of supporting legal authority;
3. 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;
4. Date of the response; and
5. The procedure to appeal the denial of access under this act.

(e) Certified Copies. If the Borough's response grants a request for access, the Borough shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees under Section 10.

(f) Record discard. If the Borough's response to a requester states that copies of the requested records are available for delivery at the office of the Borough and the requester fails to retrieve the records within 60 days of the Borough's response, the Borough may dispose of any copies which have not been retrieved and retain any fees paid to date.

SECTION 6. DETERMINATION BY APPEALS OFFICER.

(a) Authorization.

1. If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under Section 1101 of Act 2008-3 within 15

business days of the mailing date of the Borough's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the Borough for delaying or denying the request.

2. In the case of an appeal of a decision by the Borough, the Office of Open Records shall assign an appeals officer to review the denial.

(b) Determination.

1. Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the Borough within 30 days of receipt of the appeal filed under Subsection (a).

2. If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.

3. Prior to issuing a final determination, a hearing may be conducted. The determination by the appeals officer shall be a final order. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the Borough.

(c) Direct Interest.

1. A person other than the Borough or requester with a direct interest in the record subject to an appeal under this section may, within 15 days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the requester's or Borough's position.

2. The appeals officer may grant a request under Paragraph (1) if:

(i) no hearing has been held;

(ii) the appeals officer has not yet issued its order; and

(iii) the appeals officer believes the information will be probative.

3. Copies of the written request shall be sent to the Borough and the requester.

SECTION 7. JUDICIAL APPEAL

(a) Appeal from Officer. Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of the Borough issued under Section 6 (b) or of the date a request for access is deemed denied, a requester or local agency may file a petition for review or other document as required by rule of court with the Court of

Common Pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay. A petition for review under this section shall stay the release of documents until a decision under Subsection (a) is issued.

(c) Notice and Records.

1. Notice. The Borough, the requester and the Office of Open Records or designated appeals officer shall be served notice of actions commenced in accordance with Section 5 and shall have an opportunity to respond in accordance with applicable court rules.

2. Record on Appeal. The record before a court shall consist of the request, the Borough's response, the appeal filed under Section 6, the hearing transcript, if any, and the final written determination of the appeals officer.

SECTION 8. Immunity.

Except as provided in Section 8 and other statutes governing the release of records, the Borough or its employees shall not be liable for civil penalties resulting from compliance or failure to comply with this Resolution.

Section 9. Intentionally omitted

SECTION 10. FEES.

(a) Postage. Fees for postage may not exceed the actual cost of mailing.

(b) Duplication.

1. Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication shall be established by the Borough.

2. The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.

3. The following apply to complex and extensive data sets, including geographic information systems or integrated property assessment lists:

(i) Fees for copying may be based on the reasonable market value of the same or closely related data sets.

(ii) Subparagraph (i) shall not apply to :

(A) a request by an individual employed or connected with a newspaper or magazine of general circulation, weekly publication, press association or radio or television station, for the purpose of obtaining information for publication for broadcast; or

(B) a request by a nonprofit organization for the conduct of educational research.

(iii) Information obtained under Subparagraph (ii) shall be subject to paragraphs (1), (2) and (3).

(c) Certification. The Borough 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.

(d) Conversion to paper. If a record is only maintained electronically or in other nonpaper 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 as provided by subsection (b) unless the requester specifically requests for the record to be duplicated in the more expensive medium.

(e) Waiver of fees. The Borough may waive the fees for duplication of a record, including but not limited to, when:

(1) the requester duplicates the record; or

(2) the Borough deems it is in the public interest to do so.

(f) Limitations. Except as otherwise provided by statute, no other fees may be imposed unless the Borough necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for the Borough'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 Resolution.

(g) Prepayment. Prior to granting a request for access in accordance with this Resolution, the Borough 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 \$100.00.

SECTION 11. CONFIDENTIALITY. If the Borough receives a request for a record that is subject to a confidentiality agreement executed before February 14, 2008, the effective date of Act 2008-3, the law in effect at the time the agreement was executed, including judicial interpretation of the law, shall govern access to the record, even if the record is a public record, unless all parties to the confidentiality agreement agree in writing to be governed by the Right-to-Know Law, as amended by Act 2008-3.

SECTION 12. POSTING. A copy of this Resolution shall be conspicuously posted at the Borough's main offices.

SECTION 13. HEADINGS. The headings of sections and parts thereof are for convenience only and shall not affect the construction hereof.

SECTION 14. SEVERABILITY. Should any section, paragraph or provision of this Resolution be declared by a court of competent jurisdiction to be invalid, such judgment shall not affect the validity of this Resolution as a whole or any part or provision thereof, other than the part so declared to be invalid or unconstitutional.

SECTION 15. REPEALER. This Resolution shall supersede and repeal all resolutions and parts thereof inconsistent or conflicting herewith.

SECTION 16. EFFECTIVE DATE. This Resolution shall become effective upon adoption except that the entirety of the within Resolution in conformity with the amendment as outlined herein as the Right-to-Know Act shall apply to requests for information made after December 31, 2008. The Borough shall attempt to comply with the within Resolution on or before December 31, 2008, but full compliance shall take effect with any and all requests for information made after December 31, 2008.

DULY RESOLVED this 8th day of September, 2008, by the Borough of Bowmanstown, Carbon County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF BOWMANTOWN

By: Burdell Steigerwalt
Burdell Steigerwalt, President

ATTEST:

Sara Baker