

**A RESOLUTION OF
THE BOROUGH OF DANVILLE
SETTING FORTH A POLICY REGARDING
REQUESTS FOR PUBLIC RECORDS
PURSUANT TO THE RIGHT TO KNOW LAW**

WHEREAS, Act 3 of 2008 was enacted on February 1, 2008 (aka Pennsylvania Right to Know Act) requiring municipal subdivisions and authorities to adopt a policy implementing the provisions and requirements of the law; and

WHEREAS, The Borough of Danville is an “agency” as defined by the Right to Know Law; and

WHEREAS, The purpose of this resolution is to set forth a policy regarding requests for public records made to the Borough of Danville pursuant to the Right to Know Law;

NOW, THEREFOR, BE IT RESOLVED BY The Council of the Borough of Danville and it is hereby resolved by the authority of same:

Section 1. Definitions

The following words and phrases when used in this resolution shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Act”

Act 3 of 2008

“Appeals Officer”

The person or persons assigned by the DCED’s Office of Open Records to hear an appeal from the Borough’s decision on a request for a record.

“Borough”

The Borough of Danville

“Council”

The Council of the Borough of Danville

“Deputy Open Records Officer”

The Finance Officer shall serve as the Open Records Officer in the absence of the Open Records Officer.

“Open Records Officer”

The Borough Secretary shall be the open records officer for the Borough of Danville. As such, the Secretary shall receive requests submitted to the Borough under the Act, direct requests to other appropriate persons within the Borough; track the Borough’s progress in responding to requests and issue interim and final responses under the Act.

“Public Record”

Any record, except those expressed in Section 708 of the Act, of the Borough of Danville

“Record”

Any document maintained by the Borough of Danville, in any form, whether public or not.

“Requester”

Any person, company or organization requesting a record from the Borough of Danville pursuant to the Act..

“Response”

The Borough’s written notice granting, denying, or partially granting or partially denying, access to a record pursuant to the Act.

“Secretary”

The Secretary or acting Secretary of the Borough of Danville.

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

(a) General Rule:

Unless otherwise provided by the Act, a public record of the Borough of Danville shall be accessible for inspection and duplication by a requester in accordance with this resolution. A public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for access during the regular business hours of the Borough. There shall be no access to a record, which is not a public record.

(b) Requests:

The Borough will fulfill verbal requests for access to records. However, in the event that the requester wishes to pursue the relief and remedies provided for in the Act, the requester must initiate such relief with a written request on the form provided by the Borough. A standard request form is attached to this Policy.

(c) Written Requests:

A written request for access to records may be received in person, by mail, by facsimile or by electronic means. A written request shall be addressed to the Secretary of the Borough of Danville, 239 Mill St., Danville, Pennsylvania, 17821. Written requests 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.

(d) Creation of a Public Record:

When responding to a request for access, the Borough shall not be required to create a public record which does not currently exist or to compile, maintain, format or organize a public record in a manner in which it does not currently compile, maintain, format or organize the public record.

(e) Conversion of an Electronic Record to Paper:

If a public record is only maintained electronically or in other non-paper media, the Borough shall, upon request, duplicate the public record on paper when responding to a request for access in accordance with this resolution.

Section 3. Access to Public Records

A) Use

The Borough shall not deny a requester access to a public record due to the intended use of the public record by the requester.

B) Redaction

If the Borough determines that a public 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 and cannot be separated, the Borough shall redact from the public 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 public 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.

C) 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 and to respond as promptly as possible under the circumstances existing at the time of the request, but shall not exceed five (5) business days from the date the written request is received by the Borough. If the Borough fails to send the response within five (5) 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, if the Borough determines that one of the following applies...

- (1) the request for access requires redaction of a public record in accordance with Section 706 of the Act
- (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 accompanied due to bona fide and specified staffing limitations
- (4) a legal review is necessary to determine whether the record is a public record subject to access under the Act
- (5) the requester has not complied with the Borough's policies regarding access to public records
- (6) the requester refuses to pay applicable fees
- (7) the extent or nature of the request precludes a response within the required time period

then the Borough shall send written notice to the requester within five (5) business days of its receipt of the request notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that the response is expected to be provided. If the date that a response is expected to be provided is in excess of 30 days following the five business days allowed in Section 901 of the Act, the request for access shall be deemed denied.

If the Borough's response grants a request for access, it shall, upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees pursuant to Section 4.

(c) Denial:

If the Borough's response is a denial of a written request for access, whether in whole or in part, a written response shall be issued and include:

- (1) a description of the record requested.

- (2) the specific reason(s) for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is not a public record, the specific reasons for the Borough's determination that the record is not a public record shall be included.
- (3) The typed or printed name, title, business address, business telephone number and signature of the public official or public employee on whose authority the denial is issued and the name, business address and business telephone number of the Open Records Officer.
- (4) Date of the response
- (5) The procedure to appeal the denial of access under the Act.

D) Final Determination

(a) Filing of Appeal:

If a written request for access is denied or deemed denied, the requester may file an appeal with the Pennsylvania Department of Community and Economic Development's (DECD) Office of Open Records, Keystone Building, 400 North Street, Plaza Level, Harrisburg, PA 1720-0225, within 15 business days of the mailing date of the Borough's denial, or within 15 days of a deemed denial. The Office of Open Records shall assign an Appeals Officer to review the denial. The appeal shall state grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the Borough for delaying or denying the request. All appeals dealing with "law enforcement records" shall be handled pursuant to Section 503 (d) of the Act.

(b) Determination:

Unless the requester agrees to an extension of time, the Appeals Officer shall make a final determination regarding the appeal within 30 days of the mailing date of the appeal. Prior to issuing the final determination regarding the appeal, the Appeals Officer may conduct a hearing. The

determination shall be the final order and the order shall be mailed to both the Borough and the appellant and shall include a written explanation of the reason for the decision.

Section 4. Fees

(a) Postage:

The Borough may impose a fee for postage, which may not exceed the actual prevailing cost of mailing.

(b) Duplication:

The Borough may impose fees for duplication of public records pursuant to Section 1307 of the Act for photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication.

(c) Certification:

The Borough may impose a fee of \$10.00 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) Waiver of Fees:

The Borough may waive the fees for duplication of a public record, including, but not limited to, when:

- (1) The requester duplicates the public record; or
- (2) It deems it is in the public interest to do so.

(f) Other Fees/Limitations:

Except as otherwise provided by the Act, no other fees shall be imposed. A reasonable fee equal to the actual cost shall be imposed if the Borough, out of necessity, incurs costs not otherwise described in this resolution for complying with the request. However, the Borough recognizes it may not impose a fee for its review of a record to determine whether the record is a public record subject to access.

(g) Prepayment:

Prior to granting a request for access in accordance with the Act, a requester shall 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 5. Miscellaneous

- (a) Although not required, it is preferred that the requester provide up to twenty-four hours notice of his/her visit to review records.

Because of the sensitivity and value of public records, the following shall govern how records are reviewed and duplicated:

1. The Borough will provide space for the requester to review the records.
2. The requester may not possess a briefcase, folder, or other item capable of concealing a public record, while reviewing the record(s)
3. If multiple files/records are requested, only one file at a time may be opened.
4. Duplication, if requested, shall only occur in batches. The Borough will provide the requester with “flags” to mark those records, or portions of records, that he/she would like duplicated.
5. Only Borough employees shall duplicate records.
6. A Borough employee shall accompany and otherwise observe the requester at all times.

- (b) The Borough may adopt amendments to this resolution which are necessary to implement the provisions and purposes of the public Right to Know Law.

- (c) Posting:

A copy of this resolution shall be conspicuously posted at the Borough’s Offices.

Section 6. Effective Date

This resolution shall take effect upon enactment.

RESOLVED THIS 9th day of December, 2008.

Thomas A. Graham
Borough Secretary

Richard Blosky
Council President