

WHITEMARSH TOWNSHIP RESOLUTION # 2008-54

POLICY ACCESS TO PUBLIC RECORDS

The purpose of this policy is to assure compliance with the Pennsylvania Right-to-Know Law, 65 P.S. § 66.1 et seq., as amended, to provide access to public records of Whitemarsh Township, to preserve the integrity of Township records, and to minimize the financial impact to the residents of the Township regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

It is the policy of the Board of Supervisors to require the presence of a designated employee when public records are examined and inspected and to charge reasonable fees for duplication of public records of the Township. The Board of Supervisors designates the Township Manager as Right-to-Know Officer, responsible for assuring compliance with the Pennsylvania Right-to-Know Law, in accordance with the following guidelines:

1. The Township Manager may designate certain employee(s) to process public record requests; however, final determination concerning access to any record shall be made by the Township Manager.
2. The Township Manager is responsible for minimizing, where possible, the financial impact to the Township regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.
3. All requests for public records of the Township under this policy shall be specific in identifying and describing each public record requested. In no case shall the Township be required to create a public record which does not exist or to compile, maintain, format or organize a public record in a manner in which the Township does not currently compile, maintain, format or organize the public record. It is not necessary that requests for public records be submitted in writing; however, Township personnel shall advise a Requester that in order to be eligible to appeal a denial of access to a record, he or she must submit the request in writing. Should a Requester choose to do so, the request shall be made on a form provided by the Township Manager, as attached hereto entitled "Whitemarsh Township Public Record Review Request", or on the "Standard Right-to-Know Request Form" available from the Pennsylvania Office of Open Records.
4. The Township Manager shall make a good faith effort to determine whether each record requested is a public record.
5. The Township Manager shall facilitate a reasonable response to a request for Township Public records. In no case is the Township expected to provide extraordinary staff to respond to the request, but will respond in a manner

consistent with Township administrative responsibilities and consistent with the requirements of the Pennsylvania Right-to-Know Law.

6. The Township Manager shall respond to the requester within five (5) business days from the date of receipt of the written request. If the Township does not respond within five (5) business days of receipt thereof, the request is deemed denied.
7. The response provided by the Township shall consist of one of the following: (1) approval for access to the public record; (2) review of the request by the designated employee; or (3) denial of access to the record requested. All written responses to a Requester shall be signed by the Township Manager.
8. If access to the public record requested is approved, the public record shall be available for access during the regular business hours of the Township. The Township Manager or his designee shall cooperate fully with the requester, while also taking reasonable measures to protect Township public records from the possibility of theft and/or modification. The presence of a designated employee is required when public records are examined and inspected.
9. Fees for duplication of public records shall be as established by the Pennsylvania Office of Open Records, set forth in the schedule prepared by that Office and attached hereto. The Township may in its discretion waive fees.
10. In the event the estimated cost of fulfilling a request submitted under this policy is expected to exceed \$100.00, the Township Manager or his designee shall obtain fifty percent (50%) of the expected cost in advance of fulfilling the request to avoid unwarranted expense of Township resources. For complex and extensive data sets, the fee may be based on reasonable market value of the same. Requests for such data shall be referred to the Township Manager. In no event may the Township impose fees for such data sets on certain members of the press, or nonprofit organizations established for the conduct of educational research, as outlined in Sections 1307 (b) (4) (ii) (A) and (B) of the Right to Know Law.
11. If the request is being reviewed, the notice provided by the Township shall be in writing and include the reason for the review and the expected response date, which shall be within thirty (30) days of the notice of review. If the Township does not respond within thirty (30) days thereof, the request is deemed denied. Review of the request is limited to situations where:
 - (a) The record requested contains information which is subject to access, as well as information which is not subject to access that must be redacted prior to a grant of access. The redacted information is considered a denial as to that information;
 - (b) The record requires retrieval from a remote location;
 - (c) A timely response cannot be accomplished due to staffing limitations;

- (d) A legal review is necessary to determine whether the record requested is a public record;
 - (e) The requester has failed to comply with the Township's policy and procedure requirements; or
 - (f) The requester refuses to pay the applicable fees.
12. If access to the record requested is denied, the notice provided by the Township shall be in writing as indicated on the form attached hereto entitled "Denial of Request to Review and/or Duplicate Township Records."
13. If the request is denied or deemed denied, the requester may file an appeal with the Office of Open Records, within fifteen (15) days of the mailing date of the Township's notice of denial, or within fifteen (15) days of the date of a deemed denial. Upon receipt of the appeal, the Office of Open Records will assign an Appeals Officer to review the appeal. The appeal must:
- (a) be in writing; and
 - (b) state the grounds for the requester's assertion that the requested record is a public record, as well as the grounds stated by the Township for denial of the request;

The Appeals Officer may, in his or her discretion, conduct a hearing on the appeal. The decision whether to conduct a hearing or not shall be a final order not subject to appeal. The Appeals Officer is required to:

- (a). set a schedule for the Requester and Open Records Officer to submit documents in support of their respective positions;
- (b) review all information submitted with respect to the appeal;
- (c) admit into evidence testimony, evidence and documents the Appeals Officer believes to be reasonably probative and relevant to the issue in dispute, and limit the nature and extent of evidence found to be cumulative;
- (d) Consult with counsel for the Municipality as appropriate;
- (e) Issue a final determination on behalf of the Office of Open Records or other Agency, as appropriate; and
- (f) Permit any other person having a direct interest in the Record to provide information relevant to the appeal or to appear before the Appeals Officer, as applicable, pursuant to Section 1101(c) of the Act.

The Appeals Officer will issue a final determination and mail such determination to the Requester and to the Township within thirty (30) calendar days of receipt of the appeal unless a different timetable is agreed to by the Requester. If the

Appeals Officer fails to issue a final determination within thirty (30) calendar days of receipt of the appeal, the appeal shall be deemed denied.

Within thirty (30) days of the mailing date of the final determination of the Appeals Officer, or of the date an appeal is deemed denied, a Requester or the Municipality may file a petition for review or other document as required by rule of court, with the Court of Common Pleas for the county in which the Municipality is located. Any decision issued by such Court shall contain findings of fact and conclusions of law based upon the evidence as a whole and shall clearly and concisely explain the rationale for the decision. The filing of a petition for review or other document with the Court of Common Pleas shall stay the release of a Record until the Court issues a decision.

15. This policy shall be posted conspicuously at the Township Building.

16. This policy shall take effect on January 1, 2009.

RESOLVED, this 18th day of December, 2008.

ATTEST:

Christopher R. van de Velde, Secretary

WHITEMARSH TOWNSHIP
BOARD OF SUPERVISORS

Leslie S. Richards, Chair