

CECIL TOWNSHIP MUNICIPAL AUTHORITY

Open Records Law

Policies and Procedures

The purpose of this policy is to assure compliance with Act 3 of 2008. 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 Open Records Law substantially amended the Act of June 21, 1957 (P.L. 390, No. 212), the 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 Authority to amend these policies and procedures in order to ensure compliance with same.

It is the policy of the Cecil Township Municipal Authority (hereinafter “the Authority”) 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 Authority pursuant to public requests for the same. Further, the Authority hereby designates the Authority Manager as the responsible party for assuring compliance with the Pennsylvania Right-to-Know Law, in accordance with the following guidelines:

I. PROCEDURE

A. Requests.

- (1) **Oral requests.** The Act does not require that the Authority respond to oral requests. The Authority may refuse to accept any oral request.
- (2) **Anonymous requests.** The Act does not require that the Authority respond to Anonymous requests. The Authority shall refuse to accept any written request that does not identify the Requester.
- (3) **Non-anonymous written requests.** The Act requires that the Authority 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 Authority should address its Response. The request should identify or describe the

Records sought with sufficient specificity to enable the Authority to ascertain which Records are being requested.

- (ii) **Forms.** The Authority may create or adopt forms for use by Requesters in preparing written requests. As such, in order to ensure compliance with these requirements the attached forms should be utilized when making a request to the Authority.

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

B. Submittal of Open Records Requests.

(1) The Authority office is designated by the Authority Board as the recipient of all Open Records Requests addressed to the Authority. All Open Records Requests are to be addressed to:

Cecil Township Municipal Authority
3599 Millers Run Road
Cecil, PA 15321
Phone: 724-746-4848
Email: ctmadmin@ceciltownship.com.
Website: <http://www.ctmaonline.org/>

The Authority 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 Authority's designated Open Records Office has received a request. If an Open Records Request is submitted to another municipal office or to some official or employee of the Authority 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.

(3) In the event a request for access to public records appears to be submitted, but not on the approved application form of the Authority, the Authority shall forward the appropriate form for application upon receipt of the request so that the request can be properly submitted to the Authority.

C. Authority'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 Authority 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 Authority'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 contemplate that Requesters will receive a Response within the five (5) business day period, it also provides the Authority 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.

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) Compute the day on which the five (5) business day period will expire and make a notation of that date.

(c) 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.

(d) Create an official file for the retention of the original Open Records Request.

(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 Authority 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 Authority'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 Authority 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 Authority'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 Authority officials and employees having control, knowledge or concern of the Records.

(3) The Authority is not required to create a Public Record that does not already exist, nor is the Authority required to compile, maintain, format, or organize a Public Record in a manner in which the Authority 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 Open Records Official has the authority to grant and deny physical access to a public record and the discretion to impose reasonable restrictions on the time, place and nature of access.

(2) The Act requires that, unless otherwise provided by law, the Public Records of the Authority must be accessible for inspection by any Requester during the regular business hours of the Authority. Unless the Authority adopts written policies to the contrary, the regular business hours of the Authority for purposes of the Act are from 9:00 a.m. until 4:00 p.m. on any business day.

(3) Access shall be provided by the Open Records Official either in the Open Records Office or some other reasonable location, 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 Authority must provide a Response to an Open Records Request within five (5) business days unless one or more specific conditions are satisfied and the Authority 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 Authority may obtain an extension of time in which to provide a final Response are:

(a) The request for access requires a redaction of a record;

(b) The request for access requires the retrieval of a record stored in a remote location;

(c) A timely response to the request for access can not be accomplished due to bona fide and specified staffing limitations;

(d) A legal review is necessary to determine whether the record is a record subject to access under the Act;

(e) The requester has not complied with the agency's policies regarding access to records;

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

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

H. Written Final Responses.

(1) **Types of final Responses.** The Act provides for three types of written final Responses:

- (a) The Authority grants the entire Open Records Request.
- (b) The Authority refuses the entire Open Records Request.
- (c) The Authority grants part of the Open Records Request and refuses the remainder.

(2) **Deemed denials.** The failure of the Authority 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 Authority for denying the Open Records Request and shall include one or more citations of supporting authority.

(b) In the event that the Authority'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 Office of Open Records.

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

I. 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 Authority is not required to alter their original records.

J. Duplication of Public Records.

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

(2) The Authority 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 Authority 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 Authority 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 Office of Open Records.

(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 Office of Open Records shall follow the following process for handling Exceptions. This process shall include the following steps:

(1) Date-stamp the Exceptions letter.

(2) Retain the envelope and any documents that accompany the Exceptions letter.

(3) If necessary, consult with counsel for the Office of Open Records.

(4) May schedule and conduct hearings, if necessary.

c. Time for filing Exceptions.

(1) Exceptions to the Office of Open Records 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 Office of Open Records.

(2) Exceptions should address the reason 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 Office of Open Records.

Exceptions shall be set forth in writing and shall be correctly addressed and submitted to the Office of Open Records. The Office of Open Records address is:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
717-346-9903
Email: openrecords@state.pa.us

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

II. APPEALS TO COURT OF COMMON PLEAS.

Where the Office of Open Record'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 Court of Common Pleas of Washington County.

III. RETENTION AND DISPOSAL OF PUBLIC RECORDS.

There are statutes, regulations and other laws that regulate the Authority's retention and disposition of Records. The Authority 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.

IV. WRITTEN POLICIES AND REGULATIONS.

The Authority, the Open Records Official and the Open Records Exceptions Official each have the discretion to adopt any other written policies 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 Authority 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 Authority.

V. 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 Authority Council from time to time as appropriate, using the standards provided in the Act.

(b) The Act requires that, in various circumstances, the Authority shall redact information from records. The Act provides that additional fees may be imposed if the Authority 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 Authority may, in its discretion, insist that payment be made by certified check. In the alternative, the Authority may insist that a personal or business account check must first have cleared. If the fee is for copying only, the Authority 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 Authority may deny access until the fee is paid.

SCHEDULE A

Fees for duplication of public records shall be as follows:

- (a) Photocopying: 25 cents (\$0.25) per page.
- (b) Duplication of public electronic and/or tape records: actual cost to the Authority for duplicating the public record.
- (c) Certified copies: one dollar (\$1.00) per page.
- (d) Postage: actual cost to the Authority for mailing the public record. the Authority may in its discretion waive fees.

CECIL TOWNSHIP MUNICIPAL AUTHORITY

3599 Millers Run Road

Cecil, PA 15321

Phone: 724-746-4848

Email: ctmadmin@ceciltownship.com.

Website: <http://www.ctmaonline.org/>

REQUEST FOR PUBLIC RECORDS

In accordance with the Cecil Township Municipal Authority's Open Records Policy, the following information is required to request any public record.

1. The request is to:

_____ access copies of records.

_____ procure copies of records.

_____ access to the documents and a copy of those documents.

Note: A request to access records does not include a right to remove a record from the control or supervision of the Open Records Officer.

2. Requestor Information (All information must be legible)

Name: _____

Address: _____

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

3. Information Requested

All records requested must be identified and/or described with sufficient specificity so that we may ascertain whether we have these documents and how to locate them. (Note: Each record request must be specific to one record. Multiple record requests are permitted but must be on separate forms.)

4. Medium in which the record is requested (fees apply – Please see Schedule A)

_____ Photocopy or electronic scan/print

_____ Electronic e-mail

5. I certify that I am a resident of the United States of America. (Note: Appropriate documentation may be requested.)

Signature of Requester

CECIL TOWNSHIP MUNICIPAL AUTHORITY

Response to Request

Date of Response: _____

Your request for the stated record was received on _____

In response to your request, we submit the following:

_____ The public record you requested has been accepted and is being processed. Please remit \$_____.

_____ We have determined that your request requires an extension of time due to the complicated nature of the assimilation of data. You should expect a response on our about _____.

_____ Your request has been denied for the following reason(s):

This denial is based upon the following legal authority:

You have the right to appeal this decision. If you appeal, you must either:

1. Within fifteen (15) days of the notice of denial or deemed denial, file exceptions with the Office of Open Records in accordance with the Authority's Open Records Request Policy and Procedures at:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
717-346-9903
Email: openrecords@state.pa.us

If you file exceptions, the Office of Open Records has thirty (30) days in which to respond to your exceptions, unless an extension is granted by the parties. The Office of Open Records may decide to conduct a hearing with that time assist in the making of the decision.

----OR----

Within thirty (30) days of the notice of denial, or within thirty (30) days of the Office of Open Records final decision (in the event that you have filed exceptions), file a petition for review in the Washington County Court of Common Pleas.

CECIL TOWNSHIP MUNICIPAL AUTHORITY

By: _____
Open Records Officer
Cecil Township Municipal Authority

CECIL TOWNSHIP MUNICIPAL AUTHORITY
PUBLIC RECORD REVIEW/DUPLICATION REQUEST

Office Record re: PUBLIC RECORD REVIEW/DUPLICATION REQUEST

To be complete by: _____ (within five days of receipt of request)

Date received: _____

Action Taken:

_____ Approved

Date of approval: _____

_____ Denied

Date notice mailed: _____

_____ Additional Review

Date notice mailed: _____