EAST NORRITON TOWNSHIP
POLICY FOR RIGHT-TO-KNOW LAW REQUESTS

OVERVIEW

Amendments to Pennsylvania's Right-to-Know Law, 65 P.S. § 667.101, et seq. (the "Act"), became effective on January 1, 2009. The following policy establishes the procedure by which East Norriton Township ("Township") will address requests made to it for records under the Right-to-Know Law.

1. Appointment of Open Records Officer

   a. The Board of Supervisors of East Norriton Township hereby designates the Township Manager as the Open-Records Officer to handle requests under the Act. The Open-Records Officer shall be responsible for:

      i. Receiving requests under the Act,

      ii. Directing requests to others within the Township for purposes of information-gathering

      iii. Tracking the Township's progress in responding to requests, and

      iv. Issuing interim and final responses under the Act.

   b. The Open-Records Officer, upon receiving a request for a record, as defined under the Act, shall:

      i. Note the date of receipt of the written request,

      ii. Determine the day on which five business days shall pass from receipt of the request,

      iii. Maintain an electronic or paper copy of written requests, together with documentation submitted with the request, and

      iv. Create a file for retention of the request, the response, and other correspondence with the requester.

   c. If a request is denied, the written request and its file will be maintained for at least thirty (30) days, but if an appeal is filed, the request and its file will be retained until a final determination is issued or the appeal is deemed denied.

2. Posting Requirements

   a. The Township shall post the following at the municipal building, and on the website:

      i. Contact information for the Open-Records Officer (including location address, email address and telephone number).

      ii. Contact information for the Pennsylvania Office of Open Records.

      iii. A form which may be used for filing a request under the Act.

      iv. Township regulations, policies and procedures relating to the Act.

3. Requests for Records

   a. Any request made to the Township under the Act, if the requester chooses to retain his or her rights and remedies under the Act, shall be in writing and meet the following procedural requirements:

      i. Provide a name and address to which a response to the request can be sent.

      ii. Specifically identify the record(s) requested, with sufficient specificity to enable the Township to ascertain which records are being requested.

      iii. State whether the requester is a legal resident of the United States or a Commonwealth, local, judicial or legislative agency.

   b. "In writing," as referred in subparagraph (a) above, includes written requests submitted in person, by mail, by e-mail or by facsimile.

   c. Requesters may submit requests under the Act on either the uniform form adopted by the Pennsylvania Office of Open Records, or under a form developed by the Township and made available on the Township website or at the municipal building.

   d. Any failure to provide a name and address shall render the request administratively incomplete. The Township shall not be required to respond to an administratively incomplete request.

   e. Right-to-Know requests must be sent or delivered to the Township by one of the following approved methods of transmission: (1) United States mail, (2) courier, (3) express delivery, (4) overnight delivery, (5) hand-delivery, (6) facsimile, or (7) e-mail. No other form of transmission is permitted.

f. The Township may accept verbal requests for records, but the requester will not be afforded the rights and remedies provided under the Act.

g. Right-to-Know requests must be sent or delivered to:

East Norriton Township
Open Records Officer
2501 Stanbridge Street
East Norriton, PA 19401

h. Right-to-Know requests received by the Township after the close of regular business hours shall be deemed to have been received by the Township on the following regular business day. This shall include any facsimile or email transmission received after regular business hours. The regular business hours of the Township are 8:00 a.m. - 4:00 p.m.

4. Township Response to Requests for Records – Procedural

a. A Right-to-Know request may be denied if it does not identify the records requested with sufficient specificity.

b. In conducting an initial review of a Right-to-Know request, the Open-Records Officer may, but is not required to, contact the requester to obtain additional information to assist the Township in responding to the request.

c. The Open-Records Officer shall respond to the requester within five (5) business days from the date of receipt of the written request. A business day does not include Saturday, Sunday or a Federal or State or Township holiday. A business day also does not include any day when the Township offices are closed pursuant to a decision by management, an unanticipated event such as a natural disaster, or at the direction of a local, State, or Federal agency or official. If the Open-Records Officer does not respond within five (5) business days of receipt thereof, the request is deemed denied. For purposes of determining the end of the five-business-day period, the day a Right-to-Know request is deemed received is not included in that determination. For example, if a Right-to-Know request is received on a Monday, the Township's response is not due until the following Monday, assuming there is no intervening holiday or closure of the Township offices.

d. If, in response to a request, the Township produces a record that is not a record as defined under the Act, the Township shall notify any third party that provided the record to the Township, the person that is the subject of the record and the requester. Additionally, if a third party provided a record to the Township and the record included a written statement signed by a representative of the third party that the record contained a trade secret or confidential proprietary information, the Township shall notify the third party of a request for that record within five

business days of receipt of the request for the record. The third party thereafter has five (5) business days from receipt of notification from the Township to provide input on the release of the record. The Township shall then deny or release the record within ten (10) business days of the provision of notice to the third party and shall notify the third party of its decision.

5. Township Response to Requests for Records – Substantive

   a. Upon receipt of a written request for access to a record, the Township shall make a good faith effort to determine if the record requested is a record as defined under the Act, and whether the Township has possession, custody or control of the record, and shall respond as provided in subsection (b), below.

   b. The Township response shall consist of: (1) approval for access to the record, (2) review of the request by the Open-Records Officer, or (3) denial of access to the record requested. The Township may also partially deny the request, permitting review of some, but not all, of the requested records. This may apply where a record contains information which is subject to access as well as information which is not subject to access, in which case the Township'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 Township shall redact from the record the information which is not subject to access, and grant access to the remainder of the record. The Township shall not deny access to the record if the information which is not subject to access is able to be redacted.

   c. If access to the public record is approved, all applicable fees shall be paid in order to receive access to the record requested. Thereafter, the public record shall be available for access from M-F 8 - 4:00 [dates, times]. The Open-Records Officer shall cooperate fully with the requester, while taking reasonable measures to protect the Township's records from the possibility of theft and/or modification.

   d. A response that constitutes a full or partial denial of a request will include the following:

      i. A description of the record requested.

      ii. The specific reasons 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 record under the Act, the specific reasons for the Township's determination that the record is not under the Act shall be included.

iii. The name, title, business address, business telephone and signature of the Township Open-Records Officer on whose authority the denial is issued.

iv. Date of the response.

v. The procedure to appeal the denial of access to the requested record.

e. If the Township does not respond to the request within five (5) business days after a Right-to-Know request is docketed as having been received by the Township, a Right-to-Know request shall be deemed to have been denied and the request may file an appeal.

f. A public record that is not in the possession of the Township but is in the possession of a party with whom the Township has contracted to perform a governmental function on behalf of the Township, and which directly relates to the governmental function and is not exempt under the Act, shall be considered a public record. A request for a record in possession of such third party shall be submitted to the Township Open-Records Officer, and upon a determination the record is subject to access under the Act, the Open-Records Officer shall assess a duplication fee as provided under the Act and, upon collection of the fee, remit the fee to the third party possessing the record if the third party duplicated the record.

g. Upon receipt of a written request for access, the Open-Records Officer shall determine whether one of the following applies:

i. The request for access requires redaction of a public record.

ii. The request for access requires the retrieval of a record stored in a remote location.

iii. A timely response to the request for access cannot be accompanied due to bona fide and specified staffing limitations.

iv. A legal review is necessary to determine whether the record is a record subject to access under the act.

v. The requester has not complied with the Township's policies regarding access to records.

vi. The requester refuses to pay applicable fees authorized by this act, or

vii. The extent/nature of the request precludes a response within the required time period.

In the event one of the above seven situations apply, the Open-Records Officer

shall send written notice to the requester within five (5) business days of receipt of the request, and such notice shall include a statement notifying the requester that the request is being reviewed, the reason for the review, a reasonable date that a response is expected and an estimate of applicable fees owed when the record becomes available. If the expected response date is over thirty (30) days from the end of the five day period, the request shall be deemed denied unless the requester approves an extension in writing. In the event the requester approves the extension, the request is deemed denied on the day following the thirty-day period if the Township has not provided a response by that date.

h. In the event the estimated cost of fulfilling a request submitted under the Act is expected to exceed $100.00, the Open-Records Officer shall obtain fifty percent (50%) of the expected cost in advance of fulfilling the request to avoid unwarranted expense of the Township's resources. Unless prepayment is made by certified check, access will be denied until a regular check clears.

i. If the request is denied or deemed denied, the requester may file an appeal within fifteen (15) business days of the mailing date of the Township's notice of denial, or within fifteen (15) business days of a deemed denial, with the Pennsylvania Office of Open Records. The appeal shall state the grounds upon which the requester asserts that the record is a record under the Act, and shall address any grounds stated by the Township for delaying or denying the request.

j. The Township may deny a requester access to a record if the requester has made repeated requests for that same record, and these repeated requests have placed an unreasonable burden on the Township. Nonetheless, such denial will not restrict the requesters' ability to request different records.

k. The Township may also deny a requester access when timely access is not possible due to fire, flood or other disaster, or when access to historical, ancient or rate documents, records, archives and manuscripts may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record. However, to the extent possible, the contents of these records shall be made accessible to a requester even if the record itself is physically unavailable.

6. <u>Excluded Records</u>

For purposes of this Section 6, the term "Agency" refers to "Agency" as defined under the Act. The following is a list of records which are exempt from access by a requester under the Act:

a. A record the disclosure of which:

i. would result in the loss of Federal or State funds by the Township, an Agency, or the Commonwealth; or

ii. would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

b. A record maintained by the Township or an Agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

c. A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

i. documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

ii. lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and

iii. building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

d. A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.

e. A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

f. The following personal identification information, subject to (iv) and (v):

   i. A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.

   ii. A spouse's name; marital status, beneficiary or dependent information.

   iii. The home address of a law enforcement officer or judge.

   iv. Subsections (F)(i)-(iii) do not preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a public official or Township employee.

   v. Nonetheless, the Township may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

g. The following records relating to a Township or Agency employee:

   i. A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office.

   ii. A performance rating or review.

   iii. The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency (all of which as defined under the Act), unless the release of the test is restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by the Township may be disclosed.

   iv. The employment application of an individual who is not hired by the Township.

   v. Workplace support services program information.

   vi. Written criticisms of an employee.

   vii. Grievance material, including documents related to discrimination or sexual harassment.

viii. Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to a Township or Agency final action that results in demotion or discharge.

ix. An academic transcript.

h. A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.

i. In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.

j. The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for the Township.

k. A record that reflects:

i. The internal, predecisional deliberations of the Township, its members, employees or officials or predecisional deliberations between Township members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

ii. The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.

l. A record that constitutes or reveals a trade secret or confidential proprietary information.

m. Notes and working papers prepared by or for a public official or Township employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.

n. Records that would disclose the identity of an individual who lawfully makes a donation to a Township or other Agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the Township or Agency, including lists of potential donors compiled by the Township/Agency to pursue donations, donor profile information or personal identifying information relating to a donor.

o. Unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research- related material and scholarly correspondence of a community college or an institution of the State System of Higher Education or a faculty member, staff employee, guest speaker or student thereof.

p. Academic transcripts.

q. Examinations, examination questions, scoring keys or answers to examinations. This includes licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education.

r. A Township record relating to or resulting in a criminal investigation, including:

   i. Complaints of potential criminal conduct other than a private criminal complaint.

   ii. Investigative materials, notes, correspondence, videos and reports.

   iii. A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.

   iv. A record that includes information made confidential by law or court order.

   v. Victim information, including any information that would jeopardize the safety of the victim.

   vi. A record that, if disclosed, would do any of the following:

      1. Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

      2. Deprive a person of the right to a fair trial or an impartial adjudication.

      3. Impair the ability to locate a defendant or codefendant.

      4. Hinder the Township's ability to secure an arrest, prosecution or conviction.

      5. Endanger the life or physical safety of an individual.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102 and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. § 3754(b).

s. A record of the Township or an Agency relating to a noncriminal investigation, including:

   i. Complaints submitted to the Township/Agency.

   ii. Investigative materials, notes, correspondence and reports.

   iii. A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

   iv. A record that includes information made confidential by law.

   v. Work papers underlying an audit.

   vi. A record that, if disclosed, would do any of the following:

      1. Reveal the institution, progress or result of a Township/Agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by the Township or Agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

      2. Deprive a person of the right to an impartial adjudication.

      3. Constitute an unwarranted invasion of privacy.

      4. Hinder the Township's ability to secure an administrative or civil sanction.

      5. Endanger the life or physical safety of an individual.

t. Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings. However, this does not apply to a 911 recording, or a transcript of a 911 recording, if the Township or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

u. DNA and RNA records.

v. An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

w. Draft minutes of any meeting of the Township or of an Agency until the next regularly scheduled meeting of the Township/Agency.

x. Minutes of an executive session and any record of discussions held in executive session.

y. The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the Township or an Agency relative to the following:

    i. The leasing, acquiring or disposing of real property or an interest in real property.

    ii. The purchase of public supplies or equipment included in the real estate transaction.

    iii. Construction projects.

    This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

z. Library and archive circulation and order records of an identifiable individual or groups of individuals.

aa. Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.

bb. A record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.

cc. A proposal pertaining to the Township procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in

an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of Township proposal evaluation committees established under 62 Pa.C.S. § 513.

dd. A record or information relating to a communication between the Township or an Agency and its insurance carrier, administrative service organization or risk management office. This does not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.

ee. A record or information:

i. Identifying an individual who applies for or receives social services; or

ii. Relating to the following:

1. The type of social services received by an individual;

2. An individual's application to receive social services, including a record or information related to an agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the Township and the identity of a caregiver or others who provide services to the individual; or

3. Eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

ff. Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph does not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A.

gg. A record identifying the name, home address or date of birth of a child 17 years of age or younger.

7. Access to Township's Records

a. Providing a requester with physical access to a document in the Township's office is a "response" for the purposes of the Right-to-Know Law. Hours of access shall be 8:00 a.m. - 4:00 p.m.

b. Agencies, as defined under the Act, and United States residents are entitled to access to public records under the Act.

c. A record will be provided to the requester in the medium requested if the record currently exists in that medium. Otherwise, the record will be provided in the medium in which it currently exists. If a record is only available in electronic form, the Township may respond to the request by notifying the requester that the record is available through publicly accessible electronic means or that the Township will provide access to inspect the record electronically. If the requester is unwilling or unable to access the record electronically, the requester may, within thirty (30) days following receipt of the Township's notification, submit a written request to have the record converted to paper. The Township shall thereafter provide access to the record in printed form within five (5) days of receipt of the written request to convert the record.

d. When responding to a request for access, the Township is not 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 agency does not currently compile, maintain, format or organize the record.

e. If the Township grants a request for access and informs the requester that copies of the requested records are available for delivery at the municipal building, and the requester fails to retrieve the records within sixty (60) days of the Township's response, the Township may dispose of any copies which have not been retrieved and may retain any fees paid to date.

8. Costs

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

b. Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media or other means of duplication shall be established by the Pennsylvania Office of Open Records.

EAST NORRITON TOWNSHIP
RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: _____

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTOR: _____

STREET ADDRESS: _____

CITY/STATE/COUNTY (Required): _____

TELEPHONE: _____

RECORDS REQUESTED (provide as much specific detail as possible so the agency can identify the information):

_____

_____

_____

_____

DO YOU WANT COPIES? YES or NO

DO YOU WANT TO INSPECT THE RECORDS? YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO

RIGHT TO KNOW OFFICER:

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) DAY RESPONSE DUE: