



The New Open Records Act Q&A

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Q. When was the new Open Records Act enacted and when did it take effect?

A. The governor signed Act 3 (S.B.1) into law on February 14, 2008 effective January 1, 2009.

Q. Is a requester still defined as a citizen of the Commonwealth?

A. No. The definition has been expanded to include any "person that is a legal resident of the United States and requests a record pursuant to this act." The term also includes an agency and an individual with a Green Card.

Q. What is the definition of a "public record?"

A. "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 privilege."

Q. Do we handle requests in the same manner as the prior law?

A. No. There are new procedures. First, council must designate an official or employee as the **Open-Records Officer**. All requests (verbal, electronic, written, etc.) must be made to this person; any requests given to another official/employee must be directed to the Open-Records Officer. The borough must provide the Open Records Officer's name, title, borough address and other contact information to the state Open Records Office.

Q. What are the duties of this Open-Records Officer?

A. According to section 502 "this official receives the request, tracks the progress in responding, and issues an interim and a final response to the requester." The Open-Records Officer must date stamp every non-verbal request and calculate the five business days when a response is due.

Q. How long must we retain copies of the written request?

A. According to section 502 (b)(iii) the Open-Records Officer must "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 under section 1101 (b) or the appeal is deemed denied.”

Q. Must we use a standardized request form?

A. Section 505 of the act mandates that the state Office of Open Records create a standardized form. A borough may create its own form, but must accept any request made on the standardized form.

Q. Can we also appoint a secondary Open-Records Officer?

A. Although the act is silent, the State Open Records Office approves and recommends that local agencies appoint a deputy Open Records Officer to serve when the borough’s ORO is unavailable due to illness or a vacation.

Q. Will council be required to re-write its records request policy?

A. The borough will be required to amend its policy due to the new request/appeals procedures.

Q. Are we required to post the records request policy?

A. Yes. The borough must post the policy in the office, make copies available, and also post a copy of the policy on the borough’s web site, if the borough has one.

Q. Does the borough have any recourse if a citizen repeatedly requests the same record?

A. Under section 506 (a) of the act the borough can deny the request if the repeated requests have created a burden on the agency. Please note though that the borough cannot deny a request for a different record.

Q. Our borough follows the 2008 Municipal Record Retention Schedule and we dispose of records from time to time. What happens if we have discarded the record per the schedule? Will we be liable?

A. No. Section 507 states this new law does not either repeal, amend, or modify the Municipal Record Retention Schedule.

Q. Are we required to compile a record in a certain manner if it doesn’t exist?

A. No. However, the borough has the **option** to do so.

Q. Are audio recordings public records under the act?

A. According to the State Open Records Office they are public records, but “they do not constitute minutes, either draft or final.”

Q. We reuse our tapes after the written minutes have been approved. Must we keep all our tapes now?

A. If the borough has adopted a policy whereby it reuses the tape, then that policy will stand.

Q. Our borough keeps our tapes. Are we required to duplicate the tape if we receive a request?

A. Yes. If the requester wants a duplicate, then the borough is required to do so.

Q. We use a digital (tape less) recorder. Are we still required to provide a copy or can we just tell the requester to come to the office to listen to the tape?

A. According to an attorney at the State Open Records Office “the agency is required to provide the information in the medium requested. The material could be copied onto a disc and the agency would be permitted to charge the actual cost for the disc.”

Q. Will volunteer fire companies be required to provide copies of their records?

A. Yes. According to the State Open Records Office the volunteer fire company provides an “essential governmental function” and therefore the volunteer fire companies records are public. The requester however must apply to the **borough** for the records and not the volunteer fire company.

Q. If a requester wants to examine tax records does he apply to the tax collector?

A. No. Commonwealth Court ruled in *Current Status, Inc. v. Rose Hykel, Tax Collector* that the tax collector is an elected office and not a local agency.

The requester would apply to the borough for the information.

Q. Is it true that some records may now be protected due to Homeland Security issues?

A. Yes. Emergency plans, infrastructure maps, etc. will be protected due to security.

Q. How does the appeal procedure work for non-criminal requests?

A. First, a requester must submit the request in writing in order to reserve his right to appeal. The borough’s Open-Records Officer must give a response (a denial is considered a response) within five business days. The requester must appeal the decision within 15 business days from the date of the mailing date of the agency response to the state Office of Open Records. “An appeal must state the grounds for asserting openness and address the grounds of the agency denial. The Office of Open Records assigns an appeals officer.”

The appeals officer must make a final written determination within 30 days, with an explanation of the decision. If no determination is issued within 30 days, it is deemed a denial. The appeals officer may conduct a public hearing, but is not required to do so. The determination is the final order.

The requester or borough may appeal the final order to the court of common pleas within 30 days of the receipt of the appeals officer’s determination.

The act also authorizes a third party who has an interest in the appeal to join an appeal within 15 days of “receiving actual knowledge about the appeal.”

Q. I have heard that there is a separate appeals process for criminal investigative records?

A. That is correct. After the borough's Open-Records Officer has issued a denial, the requester must appeal to the county district attorney.

Q. Are we allowed to charge for research time and higher fees?

A. The new act remains the same in this regard: no charge for research/employee time and the duplication fee must be comparable to the fee that the business community charges. The state Office of Open Records will be establishing a fee schedule for more comprehensive and technologically sophisticated records.

Q. What are the penalties?

A. The borough can be fined up to a maximum of \$1500 for willfully violating the law, plus attorney fees. If the request or the appeal is proved to be frivolous, then the same applies to the requester.