

MARSHALL TOWNSHIP

PUBLIC RECORD POLICY

§1. **Short Title.** This Policy shall be known as the “Marshall Township Public Record Policy.”

§2. **Definitions.** For purposes of this Policy, the following words and terms shall have the meanings set forth below unless otherwise expressly stated. Any terms or words not defined herein shall be interpreted consistent with the definitions and meanings referenced in §102 of the Pennsylvania Right-to-Know Law, 65 P.S. §67.102, as amended.

Act – The Pennsylvania Right-to-Know Law, 65 P.S. §67.101 *et seq.*, as amended.

Agency– A Commonwealth agency, a local agency, a judicial agency or a legislative agency.

Board of Supervisors – The Board of Supervisors of the Township of Marshall.

Confidential Proprietary Information – Commercial or financial information received by the Township which is privileged or confidential and the disclosure of which would cause substantial harm to the competitive position of the person or entity that submitted the information to the Township.

Financial Record – Includes the following: (1) any account, voucher or contract dealing with the receipt or disbursement of funds by the Township or the Township's acquisition, use or disposal of services, supplies, materials, equipment or property; (2) the salary or other payments or expenses paid to an officer or employee of the Township, including the name and title of the officer or employee; or (3) a financial audit report which does not include the work papers underlying an audit.

Open Records Officer (ORO) – The Township Manager.

Policy – The Marshall Township Public Record Policy.

Public Record – Any record, including a financial record, maintained by the Township except in the following circumstances: (1) the record is exempt under §708 of the Act, 65 P.S. §67.708; (2) the record is protected by the attorney-work product doctrine, the attorney-client privilege, or other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania; or (3) the record is exempt from disclosure under any other federal or state law or regulation, or judicial order or decree.

Record – Information, regardless of physical form or characteristics, that documents a transaction or activity of the Township and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the Township. The term

includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

Record Request – A written request submitted under this Policy that seeks to access the Township’s public records.

Requester – A person that is a legal resident of the United States and requests a record pursuant to this Act. This term also includes a Commonwealth agency, a local agency, a judicial agency or a legislative agency as those terms are defined by §102 of the Act, 65 P.S. §67.102.

Response – Access to a record or the Township’s written notice granting, denying or partially granting and partially denying access to a record.

Township – The Township of Marshall.

Township Office – The offices of the Township located at 525 Pleasant Hill Road, Warrendale, PA, 15086.

Township Manager – The Manager of the Township of Marshall, or his or her designee.

Trade Secret – Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.

§3. **Open Records Officer.**

A. **Appointment.** The Township Manager is appointed as the Township Open Records Officer pursuant to the Act.

B. **Functions.** The Township Manager shall receive requests submitted to the Township under the Act, direct requests to other appropriate persons within the Township or to appropriate persons in another agency, track the Township’s progress in responding to requests and issue interim and final responses under the Act. Upon receipt of a request for a public or financial record, the Township Manager shall do all of the following:

- (1) Note the date of receipt on the written request;
- (2) Compute the day on which the five (5) business day response period under §901 of the Act, 65 P.S. § 67.901, will expire and make a notation of that date on the

written request;

(3) 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 thirty (30) calendar days or, if an appeal is filed, until a final determination is issued under §1101(b) of the Act, 65 P.S. § 67.1101(b), or the appeal is deemed denied.

§4. **Posting of Information.** The following information shall be posted at the Township Office and on the Township's Internet website:

- A. Contact information for the Township Open Records Officer;
- B. Contact information for the State Office of Open Records;
- C. The form which shall be used to file a record request; and
- D. The Policy.

§5. **Requests for Access to Township Public Records.**

A. **General Rule.**

(1) **Public Records.** Unless otherwise provided by law or this Policy, a public record of the Township shall be accessible for inspection and duplication by a requester in accordance with the Act and this Policy. A record being provided to a requester shall be provided in the medium requested if the record exists in that medium; otherwise it shall be provided in the medium in which it exists. Public records shall be available for access at the Township Office during the regular business hours of the Township, which are: 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal or governmental holidays. Nothing in this Policy shall provide for access to a record which is not a public record or shall be construed to require access to any Township computer or any computer of an individual Township employee.

(2) **Exemptions.** The Township exempts from disclosure those records set forth in §708 of the Act, 65 P.S. § 67.708. The burden of proving that a Township public record is exempt from public access shall be on the Township by a preponderance of the evidence.

B. **Written Requests.**

(1) All requests for access to Township records must be in writing on such form as may be prescribed from time to time by the Township Manager. The Township will not fulfill oral requests or oral or written anonymous requests for access to

records. In the event that the requester wishes to pursue the relief and remedies provided for in the Act, the requester must initiate such relief through a written request to the Township.

(2) A written request for access to Township records shall be transmitted to the Township in person, by mail or by facsimile. A written record request shall be addressed to the Township Manager, Marshall Township, 525 Pleasant Hill Road, Warrendale, PA, 15086, and shall include: (1) an identification or description the requested records with sufficient specificity to enable the Township to ascertain which records are being requested; and (2) the name and address to which the Township should address its response. A written record request need not include any explanation of the requester's reason for requesting or intended use of the records. Employees of the Township are directed to forward all requests for records to the Township Manager.

§6. Township Response to Record Requests.

A. General Rule.

(1) Upon receipt of a written record request, the Township shall make a good faith effort to determine if the record requested is a public record and whether the Township has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in full in order to receive access to the record requested. The time period for the Township's response to a written record request shall not exceed five (5) business days from the date the written request is received by the Township. If the Township fails to send the response within five (5) business days of receipt of the written record request, then said record request shall be deemed denied.

(2) The Township may not deny a requester access to a public record due to the intended use of the public record by the requester.

B. Extension of Time. Upon receipt of a written record request, if the Township Manager determines that one of the situations set forth in subsections (1) through (7) below applies to said record request, then the Township Manager shall send written notice to the requester within five (5) business days of the Township's receipt of the record request. This written notice shall include: (1) a statement notifying the requester that the request for access is being reviewed; (2) the reason for the review; (3) a reasonable date by which a response is expected to be provided; and (4) an estimate of the applicable fees owed when the record becomes available. If the date by which the response is expected to be provided is in excess of thirty (30) calendar days, following the five (5) business days from the Township's receipt of the written record request, then the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice. If the requester agrees to such extension, the request shall be deemed denied on the day following

the date specified in the notice if the Township has not provided a response by that date.

- (1) The request for access requires redaction of a public record in accordance with Section 6(G) hereof.
- (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 accomplished due to bona fide and specified staffing limitations.
- (4) A legal review is necessary to determine whether the record requested is a record subject to access under the Act.
- (5) The requester has not complied with the Township's policies regarding access to records contained in this Policy.
- (6) The requester refuses to pay applicable fees authorized by the Act and imposed by Section 10 hereof.
- (7) The extent or nature of the request precludes a response within the required time period.

C. **Denial of Record Request.** If the Township's response is a denial of a written record request, whether in whole or in part, then the Township shall send a written response to the requester at the address listed on the written record request. The written response denying the written record request shall include the following:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority. If the denial is a result of a determination by the Township that the record requested is not a public record, then the specific reasons for such determination must be included.
- (3) The typed or printed name, title, business address, business telephone number and signature of the Township Manager on whose authority the denial was issued.
- (4) The date of the response.
- (5) The procedure to appeal the denial under the Act and this Policy.

D. **Creation of a Public Record.** When responding to a request for access, the Township shall not be required to create a record which does not currently 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 record.

E. **Certified Copies.** If the Township's response grants a request for access, then the Township shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees referenced in Section 10 hereof.

F. **Electronic Access.** The Township may respond to a written record 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) calendar days following receipt of the Township's written response, submit a written request to the Township to have the record converted to paper. The Township shall provide access to the record in printed form within five (5) business days of the receipt of the written request for conversion to paper.

G. **Redaction.** If the Township determines that a public record contains information which is subject to access as well as information which is not subject to access, then 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, then the Township shall redact from the record the information which is not subject to access and the response shall grant access to the information which is subject to access. The Township 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 Township redacts in accordance with this subsection, shall be deemed a denial under Section 6 hereof.

H. **Disruptive Requests.** The Township may deny a written record request if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Township. A denial by the Township of a disruptive request shall not restrict the ability of the requester to request a different record.

I. **Disaster or Potential Damage.** The Township may deny a written record request: (1) when timely access is not possible due to fire, flood or other disaster; or (2) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the custodian of such record, cause physical damage or irreparable harm to the record. To the extent possible, the contents of a record described herein shall be made accessible to a requester even when the record is physically unavailable.

J. **Public Record Possession.** 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 its governmental function and is not otherwise exempt under this Act, shall be considered a public record of the Township. Nothing in these regulations or the Act shall be construed to require access to any other record of the party in possession of the public record.

K. **Discarding Requested Records.** If the Township's response to a requester states that copies of the requested records are available for delivery at the Township Office and the requester fails to retrieve the records within sixty (60) calendar days of the Township's response, the Township may dispose of any copies which have not been retrieved and retain any fees paid to date.

L. **Record Retention.** Nothing in this Policy or the Act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of the Township established pursuant to law, regulation, policy or other directive.

§7. **Production of Certain Records.**

A. **General Rule.** If, in response to a written record request, the Township produces a record that is not a public record, the Township shall notify any third party that provided the record to the Township of the person that is the subject of the record and the requester.

B. **Requests for Trade Secrets.** Prior to the Township's disclosure of a record, the Township shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five (5) business days of receipt of the request for the record. The third party shall have five (5) business days from receipt of notification from the Township to provide input on the release of the record. The Township shall deny the record request 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 the decision.

C. **Transcripts.** Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding before Board of Supervisors shall be provided to a requester by the Township stenographer or a court reporter, in accordance with the Township's procedure or an applicable contract. Following an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding before Board of Supervisors shall be provided to a requester in accordance with the duplication rates established in Section 10 of this Policy.

§8. **Appeal of Township's Determination.**

A. **Filing of an Appeal.** If a written request for access is denied or deemed denied, then the requester may file an appeal with the State Office of Open Records within fifteen (15)

business days of the mailing date of the Township's response or within fifteen (15) business days of a deemed denial. The appeal shall specifically state the grounds upon which the requester asserts that the record is a public record and shall specifically address any grounds stated by the Township for delaying or denying the request.

B. **Determination.** Unless the requester agrees otherwise, the Appeals Officer from the State Office of Open Records shall make a final determination regarding the requester's appeal within thirty (30) calendar days of the mailing date of the appeal. Prior to issuing the final determination regarding the appeal, a hearing may be conducted. The determination of the Appeals Officer shall be a final order. The Appeals Officer shall provide a written explanation of the reason for the decision to the requester and to the Township.

§9. **Judicial Appeal.**

A. **General Procedure.** Within thirty (30) calendar days of the date a request for access is deemed denied or of the mailing date of a final determination by the Appeals Officer, a requester may file a petition for review (or other document as may be required by rule of court) with the Court of Common Pleas of Allegheny County. A requester is entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. A petition for review shall stay the release of documents until a decision is issued by the Court of Common Pleas of Allegheny County.

B. **Notices.** The Township, the requester and the State Office of Open Records shall be served notice of any court or other actions commenced, and shall have an opportunity to respond in accordance with applicable court rules.

C. **Record on Appeal.** The record before the Court of Common Pleas of Allegheny County shall consist of: the request; the Township Manager's response; the requester's appeal; the hearing transcript, if any; and the a final written determination of the Appeals Officer from the State Office of Open Records, if applicable.

§10. **Fees for Township Services and Expenses.**

A. **Schedule of Fees.** The Township shall charge a requester the following fees related to the fulfillment of a record request:

(1) Copies: 25¢ per page. A copy is defined as either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5 inch by 11 inch page.

(2) Specialized Document Copies: Actual Cost. Specialized documents shall include, but not be limited to, blue prints, color copies, and non-standard sized documents.

(3) Certification of a Record: \$1 per record (not per page). This certification fee does not include any necessary notarization fees.

(4) Facsimile/Microfiche/Other Media: Actual cost.

(5) Postage: The actual cost of mailing.

(6) Conversion to Paper: If a public record is only maintained electronically or in other non-paper media, the Township shall charge the requester a fee for converting the document to paper. This fee shall be limited to the lesser of the fee for duplication on paper or for duplication in the native media as provided by Section 10.A.(2) above, unless the requester specifically requests for the public record to be duplicated in the more expensive medium.

B. **Waiver of Fees.** The Township 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) the Township deems it is in the public interest to do so.

C. **Other Fees/Limitations.** Except as otherwise provided by statute, no fees other than those listed in subsection A. above may be imposed upon the requester unless the Township necessarily incurs costs for complying with the record request, and such fees shall be reasonable. However, the Township recognizes it shall not impose a fee for its review of a record to determine whether the record is a public record subject to access under the Act.

D. **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. In no event shall any public records or reports be released until the requester first pays the Township all fees due and payable.

§11. **Amendments.** The Board of Supervisors may amend this Policy by resolution, adopted from time to time.