

MOTION OF THE COUNCIL OF ALLEGHENY COUNTY

A Motion amending the Allegheny County Council Policy Governing Access to Public Records.

WHEREAS, on April 7, 2009, Allegheny County Council approved a policy governing access to public records, pursuant to the terms of Act 3 of 2008; and

WHEREAS, the policy enacted contained no retention schedule for audio recordings of public meetings; and

WHEREAS, from time to time, Council does create audio recordings of regular and committee meetings as an aid to Council staff in finalizing the minutes of those meetings; and

WHEREAS, the Commonwealth has yet to create a retention schedule for recordings of this nature; and

WHEREAS, it is the desire of Council to provide clarity in Council's policy with regard to audio recordings by establishing a retention schedule for such recordings;

NOW THEREFORE, IT IS MOVED, that the Allegheny County Council amend the Allegheny County Council Policy Governing Access to Public Records as reflected in the attachment to this Motion, effective upon the date of passage of this Motion.

PRIMARY SPONSOR: COUNCIL VICE PRESIDENT MARTONI

In Council November 4th, 2009.

Read and Approved.



Rich Fitzgerald
President of Council

Attest:


Allegheny County Council

ALLEGHENY COUNTY COUNCIL POLICY GOVERNING ACCESS TO PUBLIC RECORDS

PREAMBLE

The purpose of this Policy is to assure compliance with the new Pennsylvania Right-to-Know Law, Act 3 of 2008, (hereinafter "the Act") by appointing a Open Records Officer for Allegheny County Council, by establishing procedures under which a requester can obtain access to a "record" kept or maintained by County Council while minimizing the negative financial and administrative impact to County Council with respect to the resources utilized in the receipt and processing of requests for access to public records, and by promulgating a schedule of fees for duplication of public records.

Nothing in this Policy shall be construed or interpreted in any way to limit the number of records of the County Council which may be requested or made available for inspection or to require the disclosure of the purpose or motive of any individual in requesting access to materials which are a record under the Act or the individual's intended use of the record.

SCOPE OF POLICY

This Policy is applicable only to County Council. County departments and agencies under the supervision of the County's Chief Executive, independently elected County officers (the Controller, Treasurer, Sheriff, District Attorney and Allegheny County Council), the Allegheny County Court of Common Pleas and County-created authorities are not subject to this Policy.

NOTICE OF POLICY

Copies of this Policy shall be physically posted in a conspicuous location at the Office of County Council. A copy of this Policy and related forms shall be posted on the Allegheny County Council Website along with a link to the website of the Commonwealth's Office of Open Records.

POLICY GUIDELINES AND PROCEDURES

1. DEFINITIONS

All of the definitions set forth in the Act are incorporated by reference in their entirety herein. The phrase "access to a record" as used in this Policy shall mean either to inspect or review the record in person or to be provided with a copy of the record in the medium requested.

2. COUNTY COUNCIL OPEN RECORDS OFFICER

A. Appointment

- (1) Pursuant to Section 502 (a) of the Act, County Council's Chief Clerk is hereby designated to serve as the Open Records Officer of County Council.
- (2) The Open Records Officer, with the advice and assistance of the County Council Solicitor, shall be the person within County Council immediately responsible for implementing the guidelines for operation of County Council's Policy regarding inspection of records and for assuring compliance in the first instance with the Act.

B. Duties of Open Records Officer

- (1) The County Council Open Records Officer shall do all of the following:
 - (a) receive all requests for access to a record of the County Council. ;
 - (b) track the County Council's progress in responding to requests; and
 - (d) issue interim and final responses to a requester regarding the grant or denial of access to the record.
- (2) Upon receiving a request for access to a record, the County Council's Open Records Officer shall do all of the following:
 - (a) Note the date of the receipt on every written request for access to a record;
 - (b) Compute the day on which the five-day period under Section 901 of the Act will expire and make a notation of that date on the written request.
 - (c) 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 written request is denied, the written request shall be

maintained for 30 days or, if an appeal is filed under the Act, until a final determination is issued under Section 1101 (b) of the Act or the appeal is denied.

- (d) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

3. REQUESTS FOR ACCESS TO A PUBLIC RECORD

A. Written Requests; Use of Standard Request Form

All requests for access to a record of County Council made pursuant to Pennsylvania's Right to Know Law shall be submitted in writing. Persons requesting access to records are encouraged to utilize the Pennsylvania Office of Public Records form entitled "*STANDARD RIGHT-TO-KNOW REQUEST FORM*", a copy of which is attached hereto as "Form 1." To facilitate the submission of a written request for access to a record, all County departments and agencies shall be provided with a copy of Form 1 that a requester may use to request access to a record.

B. Method of Submission of Written Request

A written request for access to a record may be submitted in person, by mail, by e-mail or by facsimile and must be addressed to the County Council Open Records Officer. Any written requests for access to records that are not submitted directly to the County Council Open Records Officer shall be forwarded to the County Council Open Records Officer; provided however, that the time period for a written response to a request for access to a record shall not commence until the County Council Open Records Officer's receipt of the written request.

C. Name and Address of Requester

All written requests for access to a public record which are not made on the STANDARD RIGHT-TO-KNOW REQUEST FORM must include the name and address to which the County Council should address its response to the request.

D. Specificity of Request

In submitting a written request for access to a public record or in filling out Form, the requester shall be specific in identifying and describing each record that he/she wishes to inspect. Failure to describe the record or records that the

requester wishes to inspect with sufficient specificity shall serve as a basis for the denial of the request. A written request, however, does not need to include any explanation of the requester's reason for requesting access to the record or the intended use of the record.

4. RESPONSE TO REQUESTS FOR ACCESS TO A RECORD

A. General Rules

- (1) Upon receipt of a written request for access to a record, the County Council Open Records Officer shall make a good faith effort to determine: (a) if the material requested is a record and, if it is a record, whether it is exempted under the Act; and (b) whether the County Council 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.
- (2) Payment of all applicable fees shall be a condition to receiving access to the record requested.

B. Time Period for Response to Request

The County Council Open Records Officer shall respond in writing to the requester within five (5) business days from the date of receipt of the written request. If the County Council Open Records Officer does not respond within five (5) business days of receipt of the written request for access to a public record(s), the request for access to the record(s) shall be deemed to be denied.

C. Possible Responses to Request

The County Council Open Records Officer may respond to a request for access to a public record within five (5) business days of receipt of the written request for access as follows: (1) written notice that the request for access to the public record is granted; or (2) written notice that the request is under review for the reasons set forth in Section 902 (a) of the Act; or (3) written notice that the request to inspect the public record has been granted in part and denied in part; or (4) written notice that the request to inspect the public record has been denied.

D. Response: Notice of Access Granted

- (1) **Time and Manner of Access** - If access to a public record requested is granted, the record shall be made available for inspection during the regular business hours of the County Council. The Open Records Officer or his/her designee shall cooperate fully

with the requester, while also taking reasonable measures to protect records from the possibility of theft and/or modification. All records made available for inspection shall be examined or inspected by a requester under the supervision of an employee designated by the Open Records Officer. Such supervision may include a requirement that the record shall be inspected or examined in the physical presence of the designated employee.

- (2) **Medium for Providing Access** - A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, the record shall be provided in the medium in which it exists.
- (3) **Electronic Access** – In addition to providing access to a record by personal inspection of the record, the County Council Open Records Officer may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the County Council will provide access to inspect the record by electronic means. If the requester is unwilling or unable to access the record by electronic means, the requester may, within 30 days following receipt of notification by the County Council Open Records Officer that the record is available for inspection by electronic means, submit a written request to the County Council Open Records Officer to have the record converted to paper. The County Council Open Records Officer shall provide access to the record by causing the record to be printed onto paper within 5 days of the receipt of the written request for conversion of the record from an electronic form to paper; provided however, that the requester pays the applicable fee for the printing (copying) of the record.
- (4) **No Obligation to Create a Record** - In no case shall the County Council be required to create a record which does not exist or to compile, maintain, format or organize a record in a manner in which the County Council does not currently compile, maintain, format or organize the record.

E. **Response Notice of Request Under Review**

- (1) Upon receipt of a written request for access to a public record, the County Council Open Records Officer shall determine if one of the following conditions applies:
 - (a) The request for access requires redaction of a record in accordance with Section 706 of the Act; or

- (b) The request for access requires retrieval of a record from a remote location; or
 - (c) A timely response cannot be accomplished due to staffing limitations; or
 - (d) A legal review by the County Council Solicitor is necessary to determine whether the record requested is subject to access; or
 - (e) The requester has failed to comply with the County Council policy and procedure requirements; or
 - (f) The requester refuses to pay the applicable fees; or
 - (g) The extent or nature of the request precludes a response within the required time period.
- (2) Upon a determination that one of the factors listed in Paragraph (1) above applies, the County Council Open Records Officer shall send written notice to the requester within five business days of the request for access. The written notice shall set forth the following:
- (a) a statement notifying the requester that the request for access is being reviewed; (b) the reason for the review; (c) a reasonable date that a response is expected to be provided; and (d) an estimate of the applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in Section 901 of the Act and Paragraph B of this Policy, 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 stating that the request is under review. If the requester agrees to the extension, then the request shall be deemed denied on the day following the date specified in the notice if there is no other response provided by the County Council Records Officer by that date.

F. Response Notice of Request Denied in Whole or Denied in Part

- (1) **Denial in Writing** - If the County Council Open Records Officer's response is a denial of a written request for access to a record, whether the denial is in whole or in part, the denial shall be in writing.
- (2) **Content of Written Denial** - The written notice denying the request shall set forth the following: (a) a description of the

record(s) requested; (b) the specific reason(s) for the denial, including a citation of supporting legal authority; (c) the typed or printed name, title, business address, business telephone of the County Council Open Records Officer on whose authority the denial is issued; and (d) the date of the notice of the response denying in whole or in part the request for access.

- (3) **Denial in Whole – Disruptive Requests** – As authorized by Section 506 (a) (1) of the Act, a written request for access to a record can be denied if the requester had made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the County Council.
- (4) **Denial in Whole – Disaster or Damage** - As authorized by Section 506 (b) (1) of the Act, a written request for access to a record can be denied (i) when timely access is not possible due to fire, flood or other disaster; or (ii) when access may, in the professional judgment of the curator or custodian, cause physical damage or irreparable harm to records consisting of historical, ancient or rare documents, records, archives and manuscripts.
- (5) **Denial in Part due to Redactions** – As authorized by Section 706 of the Act, the County Council reserves the right to redact any and all information from a record that is not subject to access. Information which the County Council redacts in accordance with the Act shall be deemed a denial of access to the redacted information.
- (6) **Denial in Whole or in Part – Exemptions** – The County Council reserves the right to deny access to a record in whole or in part where the record or any part is exempt from access under Section 708 (b) of the Act; provided however, that the County shall bear the burden of proving that the record or part thereof is exempt from access.

5. APPEAL OF DENIALS OF REQUESTS FOR ACCESS TO A RECORD

If a written request for access to a record is denied, whether in whole or in part, or is deemed denied, the requester may file an appeal with the Commonwealth's Office of Open Records and thereafter with the Allegheny County Court of Common Pleas as provided by Section 1101 and 1302 of the Act.

6. FEES AND CHARGES

A. Payment of All Applicable Fees

Payment of all applicable fees shall be a condition to receiving access to the record requested. (See Section 4 above).

B. Incorporation of Office of Open Records Fee Structure

Section 1307 of the Act requires the Commonwealth's Office of Open Records to establish a fee structure for Commonwealth Agencies and Local Agencies. Allegheny County is a local agency under the Act. The fee structure established by the Commonwealth's Office of Open Records for Local Agencies is incorporated by reference in its entirety herein and attached hereto as Exhibit "A." The fee structure established by the Commonwealth's Office of Open Records for Local Agencies also can be reviewed at <http://openrecords.state.pa.us>.

C. Prepayment of Estimated Fees

In the event the estimated cost of fulfilling a request to duplicate records submitted under this Policy is expected to exceed \$100.00, the County Council Open Records Officer or his designate shall obtain fifty percent (50%) of the expected cost in advance of fulfilling the request to avoid unwarranted expense of County resources.

7. Retention of Specific Record Types

A. Audio Recordings

Audio recordings of any meeting of any committee of Council shall be retained until such committee votes to approve the written minutes of the recorded meeting. Upon the approval of written minutes of any committee meeting, the audio recording of that meeting shall be destroyed.

78. AUTHORITY

This Policy is being implemented pursuant to authority granted by Section 504 (a) of the Act.