

**POLICY NUMBER: GI - 6.2****EFFECTIVE DATE: April 1, 2009****SUBJECT: Open Records****PREPARED BY: Policy Committee****APPROVED BY COMMISSIONERS: March 18, 2009**

This policy applies to all departments and employees except if superseded by bargaining unit agreement or court-appointed policy.

I. PURPOSE

The purpose of this policy is to provide guidelines that conform to the requirements of Act 3 of 2008 commonly known as the "Open Records Law" which fundamentally changes the "Right to Know Law". Effective January 1, 2009, the Open Records Law mandates a presumption of disclosure and shifts the burden of denial to provide information to the government.

II. POLICY

It is the policy of the County of York that requests for and duplication of public records will adhere to the requirements and procedures of the Open Records Law.

III. DEFINITIONS

- A. *Act or Open Records Law*** – The *Act of June 21, 1957 (P.L. 390, No. 212)*, commonly referred to as the "*Right-to-Know Law, (RTKL)*" as amended, 65 P.S. §§ 66.1-66.9 by Act 2002-50 and Act 3 of 2008 commonly known as the "Open Records Law". The principal change in the Open Records Law is the fundamental change in presumption. The Act in Section 305 states:

A record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record. The presumption does not apply if the record is exempt under Section 708 of the RTKL Act, if it is protected by privilege or if it is exempt from disclosure under other federal or state law or regulation or by judicial order or decree.

- B. *Business Day*** – Any Monday, Tuesday, Wednesday, Thursday or Friday, except those days when the offices of the County are closed for all or part of the day due to a holiday, severe weather, natural or other disaster or at the request or direction of local, state or federal law enforcement officials. Record requests received after the close of regular business hours will be considered as being received on the following business day.

- C. *County*** - County of York

- D. *County Offices*** - Any office of the legislative and/or executive branch of the government of the County of York no matter where physically located and whether headed by an appointed or an elected official, except for the following: The District Attorney, the Office of the Recorder of Deeds, York County Court of Common Pleas and the Departments under their control, the Register of Wills, Prothonotary, Clerk of Courts and Elections/Voter Registration.

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For the purpose of this Policy, the York County Planning Commission shall be considered a County Office.

- E. *Deemed denied*** - Any request that (i) the applicable Open Records Office receiving a written Open Records Request fails to respond to within the initial five (5) business day period; (ii) the Open Records Office extends the five (5) business day period by up to thirty (30) calendar days, but then fails to respond by the end of that extended period; or (iii) the Open Records Office notifies the Requester that it requires additional time to respond in excess of the permitted thirty (30) calendar day period.
- F. *Department under the control of the York County Court of Common Pleas*** - Domestic Relations, Adult Probation, Juvenile Probation, Divorce Masters, Court Administration and Magisterial District Justices.
- G. *Mailing date*** - The date affixed to a response to a request for access to records, which is to be the date the response is deposited in the U.S. Mail or, for a person submitting a request or exceptions, the date of the postmark on the envelope transmitting the request.
- H. *Office of Open Records*** - The Administrative office established in the Department of Community and Economic Development (DCED) for those purposes set forth in Section 1310 of the "Right-To-Know Law." (Act 3 of 2008).
- I. *Open Records Office*** - The Office(s) designated by the County Commissioners, York County Court of Common Pleas or District Attorney to receive Open Records requests.
- J. *Open Records Official*** - Any official or employee designated by the County Commissioners, York County Court of Common Pleas or District Attorney to receive Open Records requests.
- K. *Open Records Request*** - Either (i) a written request submitted to the applicable Open Records Office or Open Records Official asking for access to a document, a copy of a document or information purported to be in the possession of the County; or (ii) a written request (but not appeal) presented to the applicable Open Records Office that invokes that Act.
- L. *Privilege*** - The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.
- M. *Public Record*** - A record, including a financial record, of a Commonwealth or local agency that:
 - (1) is not exempt under section 708 of the Open Records Act;
 - (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 a privilege
- N. *Record*** - any document maintained by the County, York County Court of Common Pleas or District Attorney in any form, whether public or not.
- O. *Requester*** - a resident of the United States who requests a record pursuant to the Act.

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P. *Response* – The applicable Open Records Office reply to a request made pursuant to the Act. A response may be either (i) the act of providing the Requester with access to a record, or (ii) the applicable Open Records Office’s written notice granting, denying or partially granting and partially denying access to a record.

Q. *Solicitor* – Office of the County Solicitor.

IV. PROCEDURE

A. Open Records Functions

1. The function of the applicable Open Records Office is to receive all Open Records requests directed to any County office, to track the progress in responding to Open Records requests, to coordinate the preparation of a response and to prepare and issue interim and final responses to Open Records requests.
2. The County’s chief Open Records Official, as designated by the County Commissioners and pursuant to the Act, is responsible for receiving, tracking and responding to Open Records requests. In the absence or unavailability of the Open Records Official, an employee of the County’s Open Records Office may act as the Deputy Open Records Official.
3. The function of the Public Records Access Room is to provide a specific, established site where residents can have physical access to some or all of the County’s public records. If the County Commissioners, York County Court of Common Pleas or District Attorney elect not to establish such a room, the applicable Open Records Official shall determine on an ad hoc basis the building and room where records will be made available to a Requester and the hours of availability. In either instance the applicable Open Records Official has the discretion to establish written policies governing the use of that room including, but not limited to, the hours of access, the need and adequacy of proof of residency, restrictions or prohibitions on the removal of records, the use of written requests and the ability of a Requester to bring his or her own photocopying or other equipment into the room.
4. If the request seeks records maintained by the York County Court of Common Pleas or departments under its control, the written request must be directed to the Open Records Official for the York County Court of Common Pleas. Denials to requests issued by the Open Records Official for the York County Court of Common Pleas may be appealed to the Appeals Officer for the York County Court of Common Pleas.
5. If the request seeks records maintained by the District Attorney’s Office, the written request must be directed to the Open Records Official for the District Attorney’s Office. Denials to requests issued by the Open Records Official for the District Attorney’s Office may be appealed to the Appeals Officer for the District Attorney’s Office.

B. Requests

1. The Office of the Chief Clerk/Administrator is the office designated by the County as the recipient of all Open Records requests addressed to the County. All Open Records Requests for the County are to be addressed to the Chief Clerk/Administrator and may be submitted in person, by mail, by facsimile or e-mail. Written requests shall be addressed to County of York Open Records Official, York County Administrative Center, 28 East Market Street, Room 216, York, PA 17401-1588. The applicable facsimile number for requests is (717) 771-9804. The email address for requests is CountyOpenRecordsOfficial@york-county.org.
2. Requests seeking records maintained by the York County Court of Common Pleas or departments under its control shall be directed to Open Records Official for the Court of

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Common Pleas, Court Administrator's Office, 45 North George Street, York, PA 17401. The applicable phone number is 717-771-9234. The applicable facsimile number is 717-771-9911. The email address is CourtsOpenRecordsOfficial@york-county.org.

3. Requests seeking records maintained by the District Attorney's Office shall be directed to District Attorney Open Records Official, York County Judicial Center, 45 North George Street, 3rd Floor District Attorney's Office, York, PA 17401. The applicable phone is number (717) 771-9740. The applicable facsimile number is (717) 771-9738. The email address is DAOpenRecordsOfficial@york-county.org.
4. The County, York County Court of Common Pleas or District Attorney will not respond to oral or anonymous requests.
5. Each written request shall include the name of the Requester and the address to which the County, York County Court of Common Pleas or District Attorney should address its response. The request should also identify or describe the records sought with sufficient specificity to enable the County, York County Court of Common Pleas or District Attorney to ascertain which records are being requested. A Request may be submitted using the Open Records Request Form.
 - a. The Requester must be a resident of the United States. In determining whether the Requester meets this requirement, the applicable Open Records Officer may, in its discretion, require that the Requester produce photographic identification, such as a driver's license, showing an address.
6. A written request does not need to include any explanation of the Requester's reason for requesting or intended use of the records. A request must be reasonably specific so as to enable the reviewing officer to determine the nature and extent of the records requested. Failure to be reasonably specific may result in a denial of the request.
7. Upon receiving a written Open Records Request, the applicable Open Records Office, in conjunction with the Solicitor, will:
 - a. Date-stamp the request.
 - b. Assign a tracking number to the request.
 - c. Compute and make a notation of the date by which a response must be provided.
 1. The County, York County Court of Common Pleas or District Attorney must make a good faith effort to determine if the requested record is a public record and 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 applicable Open Records Official.
 2. The first day of the five (5) business day period will be the County's next business day after receipt of the request.
 3. If the Open Records Official fails to respond within the five (5) business day period with an interim or final response, the Open Records request is deemed denied.
 - d. Make a duplication of the request, including all documents submitted and the envelope (if any) in which it came.
 - e. Create an official file for the retention of the original request.
 - f. Record the request in the system used by the County, Court of Common Pleas or District Attorney for tracking Open Records requests.

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C. Response

1. Physical access provided to a Requester of a document or copy of a requested document, in the applicable Open Records Office, will be considered a “response” to an Open Records request. The Open Records Official will provide authorization for such access.
 - a. Public records of the County, Court of Common Pleas or District Attorney will be accessible for inspection by a Requester during the regular business hours of the County. The regular business hours of the County, Court of Common Pleas or District Attorney for purposes of this policy are from 9:00 a.m. until 4:00 p.m. on any business day.
 - b. The County, Court of Common Pleas or District Attorney is not required and will not create a public record that does not already exist, nor is the County required to compile, maintain, format, or organize a public record in a manner in which the County does not currently do so.
 - c. In compliance with the Open Record Law’s redaction requirements, the County is not required to alter their original records.
 - d. In order to prevent the Requester from having access to information to which they are not entitled, the County will redact, or eradicate, a portion of a document while retaining the remainder for review.
 - e. The County does not make duplication equipment available to a Requester but does provide for County staff to make copies or may contract for duplication services and require that the Requester pay the contractor for those services. In both instances, the County may charge a reasonable set fee as outlined in Section F below that is consistent with prevailing charges for duplication.
2. Where timely access is not provided as listed in C.1 above or otherwise requested, the County is required to provide a response in writing. The Open Records Official has the duty to prepare and send written responses and may consult, as necessary, with the Solicitor and other County Officials and employees having a concern or interest in the records.
3. The applicable Open Records Office shall send written responses to Requesters by U.S. mail and, at its discretion, may also use the following means: facsimile transmission, e-mail, overnight or parcel delivery service or courier delivery.
4. The Act provides circumstances in which the County can obtain an extension of time in which to provide a final response to a request. The County must provide the Requester with written notice that additional time will be required. This notice is referred to as an “interim response”.
 - a. Single extensions of time may not exceed thirty (30) calendar days. Notification to a Requester by the applicable Open Records Office that it needs more than the maximum thirty (30) calendar days, acts as a deemed denial.
 - b. If an extension is invoked and then there is no timely final response, the Open Records request is deemed denied.
5. Written Final Responses may be one of three types:
 - a. The County, Court of Common Pleas or District Attorney grants the entire request.
 - b. The County, Court of Common Pleas or District Attorney refuses the entire request.
 - c. The County, Court of Common Pleas or District Attorney grants part of the request and refuses the remainder.
6. Final responses that deny requests in whole or in part will list all of the specific reasons relied on by the County, Court of Common Pleas or District Attorney for denying the request and will include one or more citations of supporting authority. 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 Open Records Appeal Office.
7. Inaction by the County is not a response, even when it results in deemed denial.

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D. Appeals

1. County Offices
 - a. If a written request for access to records is denied in whole or in part or deemed denied, the Requester may file an appeal with the Office of Open Records within fifteen (15) business days of the mailing date of the County's Open Records Officer's response or within fifteen (15) days of a deemed denial.
 - b. The appeal should state the grounds upon which the Requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the County's Open Records Officer for delaying or denying the request.
2. York County Court of Common Pleas or Departments Under Its Control
 - a. If a written request for access to records is denied in whole or in part or deemed denied, the Requester may file an appeal with the Appeals Officer for the Court of Common Pleas within fifteen (15) business days of the mailing date of the York County Court of Common Pleas Open Records Officer's response or within fifteen (15) days of the deemed denial.
 - b. The Appeals Officer for the Court of Common Pleas and Departments under its control is the President Judge. The address is Appeals Officer, Court of Common Pleas, Court Administrator's Office, 45 North George Street, York, PA 17401.
 - c. The appeal shall be in writing and shall state the grounds upon which the Requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the Court of Common Pleas Open Records Officer for delaying or denying the request.
 - d. The Appeals Officer may or may not conduct a hearing in the appeal as he or she feels appropriate.
 - e. The Appeals Officer shall render a written decision on the appeal within thirty (30) days of receipt of the appeal.
 - f. Either party may file a Petition of Review of the written decision of the Appeals Officer within thirty (30) days of the mailing date of the written decision with the York County Court of Common Pleas.
3. District Attorney
 - a. If a written request for access to records is denied in whole or in part or deemed denied, the Requester may file an appeal with the Appeals Officer for the District Attorney within fifteen (15) business days of the mailing date of the District Attorney's Open Records Officer's response or within fifteen (15) days of the deemed denial.
 - b. The address of the Appeals Officer for the District Attorney is Appeals Officer, District Attorney's Office, 45 North George Street, York, PA 17401.
 - c. The appeal shall be in writing and shall state the grounds upon which the Requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the District Attorney Open Records Officer for delaying or denying the request.
 - d. The Appeals Officer may or may not conduct a hearing in the appeal as he or she feels appropriate.
 - e. The Appeals Officer shall render a written decision on the appeal within thirty (30) days of receipt of the appeal.
 - f. Either party may file a Petition of Review of the written decision of the Appeals Officer within thirty (30) days of the mailing date of the written decision with the York County Court of Common Pleas.

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E. Appeals to Common Pleas Court for County Open Records Requests

1. Where the Office of Open Record's final determination upholds the refusal of access to a document, the Requester may, within thirty (30) calendar days of the mailing date of that final determination, file a Petition for Review in Common Pleas Court.

F. Fees

1. The County will not charge for redaction services.
2. A duplicating fee for photocopying, printing from electronic media or microfilm will be imposed at 25 cents per page, per side.
3. A duplicating fee for copying onto electronic media will be imposed at \$1.00 per compact disk. A new disk will be used each time records are provided.
4. Facsimile transmission fees will be imposed at 50 cents per page faxed.
5. For other means of duplication and other costs incurred, reasonable fees based on prevailing fees for comparable duplication by local business entities or actual costs will be imposed.
6. The County may, in its discretion, insist that payment for duplication be made by certified check. If the fee is for copying only, the County shall provide access to the records but shall refuse to make any copies until the fee is paid. If the fee is for service that is necessary in order for access to be provided, the County shall deny access to the records until the fee is paid.
7. The County shall not be prohibited from exercising its discretion to waive collection of fees for documents to non-profit organizations and governmental agencies and authorities.
8. Election law or policies of the York County Board of Elections may provide that certain records and/or data can be provided to candidates or political organizations at no cost. This policy shall not supercede Election law requirements or the policies of the York County Board of Elections.
9. The County may require a requester to prepay an estimate of the fees if the fees required to fulfill the request are expected to exceed \$100.00.
10. The fee schedule for GIS documents, tax records, assessment records and other records involving large datasets, as well as, historical documents maintained by archives may be different from that set forth in this policy.

G. Retention and Disposal of Public Records

1. The Open Records Law does not modify, rescind or supercede any statutes, regulations and other laws that regulate the County's retention and disposal of records.

H. Posting Record Requests and Responses Thereto

1. The County reserves the right to post and/or release records requests and responses thereto. Individuals and entities submitting records requests should have no expectation of privacy concerning requests.

RELATED COUNTY POLICIES: HIPAA - Request for Copies of Records

RELATED FORMS: County Open Records Request Form

York County Court of Common Pleas Open Records Request Form

District Attorney Open Records Request Form

ORIGINAL DATE ESTABLISHED: June 2004 (as Right-To-Know Act)

REVISION DATES: December 2008, March 2009