

RESOLUTION 2008-25

A RESOLUTION OF THE LYNN TOWNSHIP BOARD OF SUPERVISORS ADOPTING RULES, REGULATIONS AND INTERNAL OPERATING PROCEDURES FOR REQUESTS MADE UNDER THE PENNSYLVANIA RIGHT TO KNOW LAW, AS AMENDED, IN RESPONSE TO REQUESTS FOR PUBLIC RECORDS RECEIVED ON/AFTER JANUARY 1, 2009.

WHEREAS, as evidenced by the enactment of Act 2008-3 of the General Assembly of the Commonwealth of Pennsylvania, it is the policy of the Commonwealth of Pennsylvania that certain records in the possession of local agencies, such as the Township of Lynn, are subject to the rights of inspection and copying by legal residents of the United States, and/or appeals to compel to the production of documents which may or may not have been produced for inspection or copying;

WHEREAS, it is the policy of the Township to require the presence of a designated employee when public records are examined and inspected and to charge reasonable fees for the duplication of public records of the Township;

WHEREAS, the Township Board of Supervisors is desirous of adopting rules, regulations and internal operating procedures for requests made under the Pennsylvania Right to Know Law, as amended, in response to requests for public records received on/after January 1, 2009, which are more particularly set forth below.

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. All of the foregoing "WHEREAS" clauses are incorporated herein by reference as if fully set forth at length.

SECTION 2. DEFINITIONS.

The following words shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Financial record." any of the following:

- (1) Any account, voucher or contract dealing with:
 - (i) the receipt or disbursement of funds by an agency; or
 - (ii) an agency'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 an agency, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include work papers underlying an audit.

"Public record." A record, including a financial record, that: (1) is not exempt under 708 of Act 2008-3; (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.

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

SECTION 3. DESIGNATION AND DUTIES OF OPEN RECORDS OFFICER.

(a) The position of Open Records Officer of the Township is hereby created. The Open Records Officer shall be responsible for assuring the Township's compliance with the Pennsylvania Right-To-Know Law (hereinafter ALaw@ or AAct@). By operation of this Resolution, and without specific further action by the Township Board of Supervisors, whomever holds the office of Township Administrator shall automatically be considered the Open Records Officer of the Township. In the event the Board of Supervisors creates and fills the position of Township Manager, then by operation of this Resolution, and without specific further action by Township Board of Supervisors, whomever holds the office of Township Manager shall, to the exclusion of anyone holding the position of Township Administrator, automatically be considered the Open Records Officer of the Township.

(b) The Open Records Officer shall receive requests submitted to the Township under the act, direct requests to other appropriate persons within the Township or to appropriate persons elsewhere, track the Township's progress in responding to requests, and issue interim and final responses to requests.

(c) Upon receiving a request for a public record or financial record, the Open Records Officer shall do all of the following:

- (1) Note the date of receipt on the written request.
- (2) Compute the day on which the five-day period under 65 PS ' 67.502 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 30 days or, if an appeal is filed, until a final determination is issued under 65 PS ' 67.1101(b) or the appeal is deemed denied.
- (4) If, in response to a request, the Open Records Officer will produce a record that is not a public record or financial record, he shall notify any third party that provided the record to the Township, as well as the person that is the subject of the record and the requester.
- (5) If the Township possesses a record for which a third party also stated in writing that the record contains a trade secret or confidential proprietary information, and such record is the subject of a request for access, the Open Records Officer shall notify the third party within five (5) business days of receipt of the request that such a request for access has been made. The third party shall have five (5) business days from receipt of notification to provide input on the release of the record. Depending on such input, the Open Records Officer shall deny

the request or release the record within ten (10) business days of the original notice given to the third party and advise the third party of the decision.

(6) As to the transcript of an administrative proceeding which remains appealable, such transcript shall be provided by the Open Records Officer in accordance with the contractual arrangements between the Township and the hired court reporter. Once an administrative proceeding becomes unappealable, the transcript shall be provided by the Open Records Officer in accordance with the duplication rates set forth in ' 7 of this Resolution.

(d) In his absence, the Open Records Officer may appoint an employee or the Township Solicitor to function as temporary Open Records Officer and carry out the duties assigned to the Open Records Officer under this Resolution, subject to an overriding decision of Township Board of Supervisors.

(e) The Open Records Officer may designate certain employee(s) to process public record requests.

(f) The Open Records Officer is responsible for minimizing, where possible, the financial impact to the Township regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

SECTION 4. REQUESTS.

(a) At his discretion, the Open Records Officer may fulfill verbal, written or anonymous verbal or written requests for access to records under the act. If the requester wishes to pursue the relief and remedies allowed under the act, the request for access to records must be written.

(b) Upon receipt, a written request for access to records shall be immediately given to the Open Records Officer. A written request may be delivered in any of the following media: in person, by mail, by e-mail, by facsimile or any other electronic means capable of being printed and reproduced.

A written request must identify or describe the records sought with sufficient specificity to enable the Township to ascertain which records are being requested and shall include the name and address to which the Township should address its response. In no case shall the Township be required to create a public record which does not exist or to compile, maintain, format or organize the public record. All written requests shall include the date of the request; requester's name, address, and telephone number; certification of United States residency; signature of requestor; and if duplication costs are reasonably expected to exceed \$100, appropriate payment shall be required in advance; otherwise, duplication costs shall be paid before any reproduced records are delivered to the requester. A written request need not include any explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law.

SECTION 5. RESPONSES.

(a) The Township shall respond to the requester within five (5) business days from the date of receipt of the written request. Except as provided in subsection (c), if the Township does not respond within five (5) business days of receipt thereof, the request is deemed denied.

(b) In preparing a response, the Open Records Officer shall determine whether each record requested is a public record or financial record and whether the Township has possession, custody or control of

the identified record. If a requested record is not in the Township's immediate possession, but in the possession of another party under contract to the Township to perform a governmental function, the Open Records Officer must promptly acquire the record to determine its suitability for production under ' 6 of this Resolution. The Open Records Officer shall then respond as promptly as possible under the circumstances, and produce the requested public or financial record for inspection and/or copying by the requester, unless he relieved from producing the record by law. Alternatively, the Open Records Officer may respond to a request by notifying the requester that the record is available through publicly accessible electronic means, including but not limited to a specific site on the internet or that the Township will provide access to inspect the record electronically. In such cases, 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 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) days of the receipt of the written request for conversion to paper.

(c) Extensions of Time. If the Open Records Officer determines the request cannot be fulfilled within five (5) business days from the date of receipt of a written request, he shall in writing advise the requester that the request is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided (up to but not exceeding 35 days from the date the original request is received), and an estimate of applicable fees to be paid once the record becomes available. The Open Records Officer shall then make the desired records available for inspection and copying within thirty-five (35) days from the date the original request is received, unless the requester agrees to a longer period of time. The sole grounds upon which the Open Records Officer may extend the time for responding beyond the initial five (5) days are as follows:

- (1) the request for access requires some degree of redaction of a record in order to preclude access to information which is not subject to access;
- (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 is a record subject to access under this act;
- (5) the requester has not complied with the agency's policies regarding access to records;
- (6) the requester refuses to pay in advance one of the following duplication costs: (i) duplication costs which are reasonably expected to exceed \$100; (ii) such duplication costs associated with disruptive requests, provided the Township is willing to produce such records anyway; or (iii) such duplication costs incurred for new requests after a requester has previously delivered a request to which the Township has responded but for which the requester never picked up the requested records or delivered payment; or
- (7) the extent or nature of the request precludes a response within the required time period.

(d) If access to the desired record requested is approved by the Open Records Officer, the same shall be available for access in the immediate presence of a designated Township employee during regular business hours of the Township Administrative Office. The designated Township employee shall cooperate fully with the requester and take reasonable measures to protect Township records from

the possibility of theft and/or modification. Copies of records shall be made upon request of and at the expense of the requester, but shall not be delivered to the requester until full payment is made. Fees for duplication of records shall be comply with the rate schedule established by Township Board of Supervisors, but in no event higher than the amount allowed by the Pennsylvania Department of Community and Economic Development Office of Open Records. The Open Records Officer may at his discretion waive fees in specific cases.

(e) The Open Records Officer may discard copies which are not retrieved by the requester within sixty (60) days of the Township=s response and retain, on behalf of the Township, any fees paid to date by the requester.

(f) If a written request for access to a desired record is denied by the Open Records Officer, the Open Records Officer shall notify the requester in writing by stating, at a minimum, a description of the record requested, the specific reasons for the denial, including a citation of supporting legal authority, the typed or printed name, title, business address, business telephone number and signature of the Open Records Officer on whose authority the denial is issued, the date of the response, and the procedure to appeal the denial of access.

SECTION 6. PRODUCTION OF RECORDS NOT REQUIRED.

(a) For public records which are not financial records, the Open Records Officer may deny a requester access to the entirety of a record, or portions thereof, to which any of the following applies:

1. The requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Township;
2. When timely access is not possible due to fire, flood or other disaster;
3. For historical, ancient or rare documents, records, archives and manuscripts, when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record;
4. A record the disclosure of which would result in the loss of Federal or State funds or result reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual;
5. A record maintained 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 is designated classified by an appropriate military authority;
6. A record which, if disclosed creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, such as electronic storage systems and data, or lists of infrastructure, resources and matters deemed critical due to their susceptibility to attack, etc.;

7. A record of an individual's medical, psychiatric or psychological history or disability status;

8. A record containing the following personal identification: 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; a spouse's name; marital status, beneficiary or dependent information; the home address of a law enforcement officer or judge¹; the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity;

9. A personnel file of a present or former employee, or application for employment from a person not hired;

10. A record relating to strategy or negotiations in labor relations or collective bargaining and related arbitration proceedings, or exhibits entered into evidence in an arbitration proceeding;

11. The draft of a resolution, regulation, statement of policy, management directive, ordinance or amendment thereto. For purposes of this clause (11) only, a Adraft@ resolution, regulation, statement of policy, ordinance or amendment shall become accessible under this Resolution when first presented for public discussion in a meeting of the Board of Supervisors or any board, committee, or commission of the Township which has been advertised in accordance with the Sunshine Act. Management directives, i.e. directives pertaining to the internal operation of Township matters on matters of personnel, shall only be accessible under this Resolution upon adoption.

12. A record that reflects the internal, predecisional deliberations of the Township Board of Supervisors, its members, employees or officials or another agency including predecisional deliberations relating to a budget recommendation, or legislative proposals or amendments, contemplated or proposed policy or course of action, any research, memos or other documents used in the predecisional deliberations. Documents submitted to request Commonwealth funds and/or the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion are accessible, however;

¹Nothing in this paragraph shall 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.

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

14. Personal notes which have no official purpose;

15. A record that would disclose the identity or list of actual or potential donors or the identity an individual who lawfully makes a donation to the Township unless to benefit a specific public official or employee;

16. A record pertaining to a criminal investigation, including: complaints of potential criminal conduct other than a private criminal complaint; investigative materials, notes, correspondence, videos and reports; the identity of a confidential source or the identity of an uncharged suspect promised confidentiality; information made confidential by law or court order; victim information, including any information that would jeopardize the safety of the victim; a record that would reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges; deprive a person of the right to a fair trial or an impartial adjudication; impair the ability to locate a defendant or codefendant; hinder an agency's ability to secure an arrest, prosecution or conviction; 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 (relating to definitions) and utilized or maintained by any law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. § 3754(b) (relating to accident prevention investigations);

17. A record relating to a noncriminal investigation, including: complaints submitted to an agency; investigative materials, notes, correspondence and reports; a record that includes the identity of a confidential source, including individuals subject to the Whistleblower Law; a record that includes information made confidential by law; work papers underlying an audit; a record that would reveal the institution, progress or result of an 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 an executed settlement agreement unless the agreement is determined to be confidential by a court; deprive a person of the right to an impartial adjudication; constitute an unwarranted invasion of privacy; hinder an agency's ability to secure an administrative or civil sanction; endanger the life or physical safety of an individual; records pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings (other than time response logs);

18. DNA and RNA records;

19. Autopsy records;

20. Draft minutes of the public portion of any meeting until the next regularly scheduled meeting of the same organization, committee, etc.;

21. Contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the Township concerning potential real estate and related supplies and equipment or construction projects;
22. Library and archive circulation and order records of identifiable individuals or groups;
23. 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;
24. A record identifying the location of an archeological site or an endangered or threatened plant or animal species not already known to the general public;
25. A proposal pertaining to 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 proposal evaluation committees established under 62 Pa.C.S. ' 513 (relating to competitive sealed proposals);
26. A record or information relating to a communication between the Township and its insurance carrier, administrative service organization or risk management office. This shall not prevent disclosure of a copy of an insurance contract;
27. A record identifying an individual who applies for or receives social services, the kind(s) of service(s) received and eligibility and governmental action thereon;
28. A record identifying the name, home address or date of birth of a child 17 years of age or younger;
29. A record protected by privilege or exempt from disclosure under federal or state law or regulation or judicial order or decree.

(b) For financial records, the Open Records Officer may deny a requester access to the entirety of a record, or portions thereof, to which any of the following applies:

1. The requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Township;
2. When timely access is not possible due to fire, flood or other disaster;

3. For historical, ancient or rare documents, records, archives and manuscripts, when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record;

4. That portion of a financial record protected under ' 5(a)(4), (5), (6), (7), (8), (16), or (17) of this Resolution.

SECTION 7. COSTS.

(a) Unless and until changed by resolution of the Board of Supervisors, fees for duplication and transmission of public records shall be as follows:

Photocopying Per Page	
8 ½ x 11	\$0.25
8 ½ x 14	\$0.30
11 x 17	\$0.50
Formatted Computer Disk	Requester must supply
Compact disk (CD)	Requester must supply
Certification of any document as a true and correct copy Township record	\$5.00 per record, unless authorized to be higher by statute (does not include notary fees)
Specialized documents (including but not limited to blue prints, color copies, nonstandard sized documents)	Actual cost
Postage	Actual cost

(b) Fees must be paid by cash or by certified check or money order made payable to: Township of Lynn.

(c) Fees for duplication of records shall be comply with the foregoing rate schedule established by Township Board of Supervisors, but in no event higher than the amount allowed by the Pennsylvania Department of Community and Economic Development Office of Open Records. The Open Records Officer may at his discretion waive fees in specific cases.

SECTION 8. APPEALS FROM DETERMINATIONS OF OPEN RECORDS OFFICER.

(a) If access to the record is denied, the notice provided by the Open Records Officer to the requester shall be in writing as indicated on the form attached hereto entitled "Denial of Request to Review and/or Duplicate Lynn Township Records."

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

(c) Within 30 days of the mailing date of the final determination of the DCED appeals officer relating to an appeal, or the date a request for access is deemed denied by the DCED appeals officer due to the failure of same to issue a determination on an appeal within thirty (30) days, the requester or the Township may file a petition for review or other document as required by rule of court with the Court of Common Pleas of Lehigh County.

SECTION 9. INSPECTION.

This policy shall be available for review at the Township office and on the Township website, along with the current name address and telephone number of both the Township Open Records Officer and Office of Open Records of the Pennsylvania Department of Community and Economic Development, and the form to be used to file requests under the Right To Know Act.

SECTION 10. REPEALER.

Any resolutions, or parts thereof, which conflict with this Resolution are hereby repealed.

SECTION 11. SEVERABILITY.

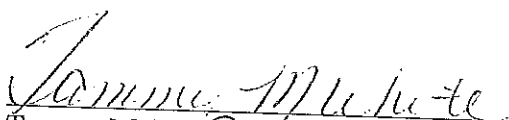
The provisions of this Resolution are severable and if any provisions hereof are declared illegal or invalid on constitutional or statutory grounds by any court of competent jurisdiction, then those provisions not specifically declared illegal or invalid remain in full force and effect.

SECTION 12. EFFECTIVE DATE.


This Resolution shall become effective January 1, 2009.

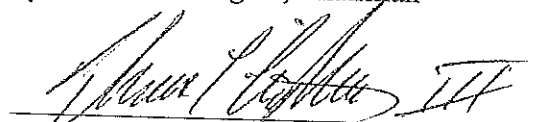
DULY ORDAINED AND ENACTED by the Board of Supervisors of Lynn Township Lehigh County, Pennsylvania, in lawful session assembled this 29th day of December, 2008.


ATTEST:


Tammy M. White, Secretary/Treasurer

BOARD OF SUPERVISORS
OF LYNN TOWNSHIP


Hermit E. DeLong Jr., Chairman


Thomas C. Creighton III, Vice-Chairman


David C. Najarian, Esq., Member

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