

Chapter 49

RECORDS, PUBLIC ACCESS TO

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[HISTORY: Adopted by the Board of Supervisors of the Township of West Deer 1-15-2003 by Ord. No. 316; and as amended 12-17-2008 by Ord. No. 375, §§1-9, 12. Amendments noted where applicable.]

§ 49-1. Purpose.

The purpose of this Chapter is to assure compliance with the new Pennsylvania Right-to-Know Law, 2008, Feb.14, P.L. 6, No. 3 (Act 3 of 2008), to provide access to public records of West Deer Township (the “Township”), to preserve the integrity of Township records, and to minimize the financial impact to the residents of the Township regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records. **[Amended 12-17-2008 by Ord. No. 375, §1]**

§ 49-2. Township Manager responsible for compliance with statute.

- A. It is the policy of the West Deer Township Board of Supervisors to require the presence of a designated employee when public records are examined and inspected and to charge reasonable fees for duplication of

public records of the Township. The West Deer Township Board of Supervisors designates the Township Manager as the open-records officer responsible for assuring compliance with the Pennsylvania Right-to-Know Law.

- B. The open-records officer shall receive requests submitted under the Right-to-Know Law, 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 Right-to-Know Law.
- C. Upon receiving a request for a public 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 § 901 of the Right-to-Know Law 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 § 1101(b) of the Right-to-Know Law or the appeal is deemed denied.

[Amended 12-17-2008 by Ord. No. 375, §2]

§ 49-3. Designation of employee to process requests.

The West Deer Township Board of Supervisors may designate certain employee(s) to process public record requests.

§ 49-4. Financial impact to Township.

The Township Manager 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.

§ 49-5. Requests for records.

- A. All requests for public records of the Township under this policy shall be specific in identifying and describing each public record requested. In no case shall the Township be required to create a public record which does not 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 public record. The Township may fulfill verbal, written or anonymous verbal or written requests for access to records under the Right-to-Know Law. If the requester wishes to pursue the relief and remedies provided for in the Right-to-Know Law, the request for access to records must be a written request. All written requests for public records shall be submitted on a uniform form developed by the Office of Open Records.
- B. A written request for access to records may be submitted in person, by mail, by e-mail, or by facsimile. A written request must be addressed to the open-records officer. Employees of the Township shall forward requests for records to the open-records officer. A written request should 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. 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.
- C. If a requested record contains both public record information as well as non-public record information, the Township may redact the non-public record information

from the record accessed in accordance with § 706 of the Right-to-Know Law.

[Amended 12-17-2008 by Ord. No. 375, §3]

§ 49-6. Response by Township; approval or denial of request; appeals.

- A. Upon receipt of a written request for access to a record, the Township shall make a good-faith effort to determine whether each 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. In no case is the Township expected to provide extraordinary staff to respond to the request, but will respond in a manner consistent with reasonable administrative responsibilities and consistent with the requirements of the Right-to-Know Law. All applicable fees shall be paid in order to receive access to the record requested.
- B. The time for response shall not exceed five business days from the date the written request is received by the open-records officer for the Township. If the Township fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied unless an extension of time is provided by operation of § 902 of the Right-to-Know Law if the open-records officer determines that one of the factors listed in § 902(a) of the Right-to-Know Law applies. These factors are:
- (1) The request for access requires redaction of a record in accordance with § 706.
 - (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 the Right-to-Know Law.
 - (5) The requester has not complied with the Township's policies regarding access to records.
 - (6) The requester refuses to pay applicable fees authorized by the Right-to-Know Law.
 - (7) The extent or nature of the request precludes a response within the required time period.
- C. Upon a determination that one of the factors listed in subsection (B) applies, the open-records officer shall send written notice to the requester within five business days of receipt of the written request for access.
- D. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of 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 § 901 of the Right-to-Know Law, 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.
- E. If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.
- F. If access to the public record requested is approved, the public record shall be available for access during the regular business hours of the Township. The designated

employee shall cooperate fully with the requester, while also taking reasonable measures to protect Township public records from the possibility of theft and/or modification. The presence of a designated employee is required when public records are examined and inspected. If the Township grants a request for access, the Township shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees under § 1307 of the Right-to-Know Law. If the Township's response to a requester states that copies of the requested records are available for delivery at the office of the Township and the requester fails to retrieve the records within 60 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.

G. If the Township's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority.
- (3) 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.
- (4) Date of the response.
- (5) The procedure to appeal the denial of access under the Right-to-Know Law.

H. Filing an appeal of Township's determination.

- (1) If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or other appeals

officer designated under § 503(a) of the Right-to-Know Law within 15 business days of the mailing date of the Township's response or within 15 business days of a deemed denial.

- (2) The appeal shall state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the Township for delaying or denying the request.

[Amended 12-17-2008 by Ord. No. 375, §4]

§ 49-7. Fees for duplication.

Section 1307 of the Right-to-Know Law requires the Office of Open Records to establish a fee structure for Commonwealth Agencies and Local Agencies. The Office of Open Records has established a fee structure which has been published online and available to the public on its web site. The following fee schedule is hereby adopted by the Township in accordance with the fee structure established by the Office of Open Records. Fees for duplication of public records shall be as follows:

- A. Photocopying: \$0.25 per page.
- B. Duplication of facsimile, microfiche, public electronic and/or tape records, or other media: actual cost to the Township.
- C. Certified copies: \$1 per page. Certification fees do not include notarization fees which are an additional charge.
- D. Postage: actual cost to the Township of mailing.
- E. Specialized documents such as blueprints, color copies, and non-standard sized documents: Actual cost to the Township.
- F. Conversion to paper: If a record is only maintained electronically or in other non-paper media, duplication

fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media unless the requester specifically requests for the record to be duplicated in the more expensive medium.

- G. Statutory fees: If a separate statute authorizes the Township to charge a different amount for a certain type of record, the Township may charge that statutory amount rather than the fees under the fee structure herein under the Right-to-Know Law. For example, police departments have the authority to charge up to \$15 per report for providing a copy of a vehicle accident report. 75 Pa.C.S. §3751(b)(2).

[Amended 12-17-2008 by Ord. No. 375, §6]

§ 49-8. Prepayment.

In the event the estimated cost of fulfilling a request for access in accordance with the Right-to-Know Law is expected to exceed \$100, the designated employee(s) shall obtain the expected cost in advance of fulfilling the request to avoid unwarranted expense of Township resources.

[Amended 12-17-2008 by Ord. No. 375, §7]

§ 49-9. Posting of policy.

- A. A copy of Chapter 49 of the Township Code, entitled "Public Access to Records," as amended, shall be posted conspicuously at the Township Municipal Building.
- B. The following information shall be posted on the Township's internet website:
- (1) Contact information for the open-records officer.
 - (2) Contact information for the Office of Open Records.

(3) A form which may be used to file a request.

(4) Regulations, policies and procedures of the Township relating to the Right-to-Know Law.

[Amended 12-17-2008 by Ord. No. 375, §9]

§ 49-10. Effective date.

This Chapter shall take effect on January 1, 2009.

[Added 12-17-2008 by Ord. No. 375, §12]

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