

WEISENBERG TOWNSHIP

ORDINANCE NO. 09-4

AN ORDINANCE IMPLEMENTING THE REQUIREMENTS OF THE PENNSYLVANIA
OPEN RECORDS LAW BY ADOPTING A FORMAL POLICY, RULES AND
REGULATIONS AND FORMS FOR REQUESTS FOR INSPECTION AND/OR COPYING
OF PUBLIC RECORDS.

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania enacted the Open Records Law within the provisions of Act 3 of 2008; and

WHEREAS, the Open Records Law requires political subdivisions to appoint an Open Records Officer and establish a policy for granting and/or denying requests for access to public records; and

WHEREAS, Weisenberg Township wishes to preserve the integrity of the Township's records and to minimize the financial impact to the residents of the Township regarding the resources consumed in the copying of Township files; and

WHEREAS, in order to comply with the requirements of the Pennsylvania Open Records Law (Act 3 of 2008), the Supervisors of Weisenberg Township desires to adopt a formal policy to follow when handling requests for access to public records as well as rules and regulations for implementing such policy and forms to be used for any and all requests for access to public records.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Weisenberg Township Board of Supervisors (the "Governing Body") of Weisenberg Township, Pennsylvania, as follows:

1. The Open Records Policy of Weisenberg Township attached hereto as Schedule 1 and incorporated herein is hereby approved and adopted.
2. The Rules and Regulations attached hereto as Schedule 2 and incorporated herein are hereby approved and adopted.
3. The form to be utilized for all requests under Pennsylvania's Open Records Law attached hereto as Schedule 3 and incorporated herein is hereby approved and adopted.
4. schedule 4
5. Weisenberg Township hereby appoints the Weisenberg Township Secretary as the Open Records Officer.
6. This ordinance shall become effective in accordance with the provisions of law and shall be applicable to all requests for public records as of January 1, 2009.

7. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of Weisenberg Township that the remainder of the Ordinance shall remain in full force and effect.

8. All ordinances and resolutions or parts thereof, insofar as the same or inconsistent herewith, are repealed hereby.

DULY ORDAINED AND ENACTED by the Weisenberg Township Board of Supervisors, Lehigh County, PA in lawful session assembled this 9th day of February, 2009.

ATTEST:

Donald P. Breininger
Donald P. Breininger, Secretary
(seal)

TOWNSHIP OF WEISENBERG

By: Robert G. Milot
Robert G. Milot, Chairperson

By: Linda Gorgas
Linda Gorgas, Vice-Chairperson

By: Thomas N. Wehr
Thomas N. Wehr, Supervisor

SCHEDULE 1

**Weisenberg Township
2175 Seipstown Road
Fogelsville, PA 18051**

OPEN RECORDS POLICY

Purpose:

The purpose of this policy is to assure compliance with Act 3 of 2008, the Pennsylvania Right to Know Law, as amended; to provide access to public records of Weisenberg Township; to preserve the integrity of Weisenberg Township's 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 records.

Requests:

All requests shall be directed to the Township Secretary at the Municipal Building: 2175 Seipstown Road, Fogelsville, Pennsylvania 18051.

All requests shall be in writing on the form provided by the Pennsylvania Office of Open Records. Said form is available at the Municipal Building or at <http://openrecords.state.pa.us>.

The Township shall make a good faith effort to determine whether the record requested is a public record. In no case shall the Township be required to create a public record that 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.

Public records will be available for inspection and/or copying at the Municipal Building during normal business hours, Monday through Friday, 8:30 a.m. to 4:30 p.m., with the exception of holidays. The Township reserves the right to be present during the inspection and/or copying of public records and to take reasonable measures during such inspection and/or copying to protect Township documents from the possibility of theft and/or modification.

Response:

The Township Secretary will review all written requests for access to public records within **five business days** after receiving such request. The Township Secretary also may designate certain employee(s) to process the public record request.

The Township Secretary will respond to all requests in a manner consistent with the Rules and Regulations promulgated by the Township and in accordance with Act 3 of 2008, the Pennsylvania Right to Know Law.

If the Township Secretary does not respond within **five business days**, the request shall be deemed denied.

Fees:

Paper copies will be \$0.25 per page per side. If mailing is requested, the cost of postage will be charged. If a disk is requested, it will be provided by the Township at the cost of \$1.00 per disk. A new disk will be necessary each time records are provided. Fax copies will be available at the cost of \$0.50 per page. If "true and correct certification" is requested, an additional charge of \$2.00 will be added. The Township will require prepayment if the total fees are estimated to exceed \$100.00.

In exceptional cases, such as copying of maps or plans, additional fees may be imposed for costs actually incurred by the Township for complying with the request.

Appeals:

If the request is denied or deemed denied, the requester may file an appeal to the Commonwealth's Office of Open Records within fifteen (15) business days of the mailing date of the Township's notice of denial or within fifteen (15) business days of the deemed denial. The appeal shall state the grounds upon which the requestor asserts that the record is a public record and shall address any grounds state by the agency for delaying or denying the request. Guidelines for the appeal can be obtained from the Commonwealth's Office of Open Records or at <http://openrecords.state.pa.us>.

Within thirty (30) days of the mailing date of the final determination from the Commonwealth's Office of Open Records, the requestor or Township may file a petition for review or other document as required by rule of court with the Court of Common Pleas for Lehigh County. A petition for review under this section shall stay the release of documents until a decision is issued.

Access to Policy:

This policy and the Act shall be available for review at the Municipal Building.

Effective Date:

This policy shall become effective on January 1, 2009.

SCHEDULE 2

RULES AND REGULATIONS PERTAINING TO WEISENBERG TOWNSHIP'S OPEN RECORDS POLICY

The purpose of Weisenberg Township's Open Records Policy is to provide access to public information and appoint a designated open-records officer in the Township.

1. Definitions.

Financial Records. The term "**Financial record**" includes: (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, or (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 a financial audit report. The term does not include work papers underlying an audit.

Public Records. The term "**Public record**" include documents that: (1) are not exempt under Pennsylvania's Right to Know Law; (2) are not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) are not protected by a privilege.

Record. Information, regardless of physical form or characteristic, 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.

Requestor. A person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency.

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

2. Prohibitions. A request for access to a public record may not be denied due to the intended use of the public record by the requester unless otherwise provided by law.

3. Presumption. A record in the possession of the Township is presumed to be a public record. The presumption will not apply if:

- (a) The record is exempt under the Pennsylvania Open Records Law;
- (b) The record is protected by a privilege; or
- (c) The record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.

4. Open Records Officer.

(a) The open-records officer shall receive requests submitted to the Township under this 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 this act.

(b) Upon receiving a request for a public record, legislative record or financial record, the open-records officer shall do all of the following:

- (i) Note the date of receipt on the written request.
- (ii) Compute the day on which the five-day response period will expire and make a notation of that date on the written request.
- (iii) 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 or the appeal is deemed denied.

5. Requests.

(a) Disruptive Requests. The Township may deny a requester access to a record 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 under this subsection shall not restrict the ability to request a different record.

(b) Disaster or Potential Damage. The Township may deny a requester access: (i) when timely access is not possible due to fire, flood or other disaster; or (ii) to historical, ancient or rare documents, records, archives and manuscripts when access may cause physical damage or

irreparable harm to the record. To the extent possible, the contents of a record under this subsection shall be made accessible to a requester even when the record is physically unavailable.

(c) Township Discretion. The Township may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this chapter, if all of the following apply:

(i) Disclosure of the record is not prohibited under Federal or State law or regulation or judicial order or decree.

(ii) The record is not protected by a privilege.

(iii) The Township determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

(d) Township 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, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the Township.

(e) Submission of Request. Townships may fulfill verbal, written or anonymous verbal or written requests for access to records under this act. If the requester wishes to pursue the relief and remedies provided for in this act, the request for access to records must be a written request.

(i) A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, any other electronic means.

(ii) A written request must be addressed to the open-records officer.

(iii) Employees of an agency shall be directed to forward requests for records to the open-records officer.

(iv) 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.

6. Response.

(a) Electronic Access. If a requested record is available by publicly accessible electronic means, the Township may notify the Requestor of its availability. The Requestor may request that the record be converted to a paper copy within 30 days of the Township's notification.

(b) Time Period. The Township will respond to all requests within five (5) business days. Such response will consist of either: (1) an approval for access to the public record, (2) review of the request by the designated employee, or (3) denial of the record requested.

(c) Access. A record being provided to a requester shall be provided in the medium

requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records, legislative records or financial records shall be available for access during the regular business hours of the Township.

(d) Fees. Fees for duplication of public records shall be as established by the Commonwealth's Office of Open Records. Said fees are outlined more fully in the Township's Open Records Policy.

(e) Review. If the request is being reviewed, the Township shall notify the requestor of such review in writing and include the reason for the review and expected response date, which shall be within thirty (30) days of the notice of review. If the Township does not respond within thirty (30) days, the request is deemed denied. Review of the request is limited to situations where:

(i) The record requested contains information which is subject to access, as well as information which is not subject to access that must be redacted prior to a grant of access. The redacted information is considered a denial as to that information;

(ii) The record requires retrieval from a remote location;

(iii) A timely response cannot be accomplished due to staffing limitations;

(iv) A legal review is necessary to determine whether the record requested is a public record;

(v) The requestor has failed to comply with the Township's policy and procedure requirements;

(vi) The requestor refuses to pay the applicable fees;

(vii) The extent or nature of the request precludes a response within the required time period.

(f) Denial. If access to the record is denied, the notice provided by the Township shall be in writing.

7. Exceptions. Although a record in the possession of the Township is presumed to be public, there are records that are exempt from disclosure; the complete list is available at <http://openrecords.state.pa.us>, and attached hereto as Schedule 4.

8. Appeal.

(a) 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 within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial. The appeal 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 agency for delaying or denying the request. The Office of Open Records shall assign the appeal to an appeals officer.

(b) Unless otherwise notified, the appeals officer will issue a decision within thirty (30) days of the appeal. If a decision is not issued within thirty (30) days, the appeal is deemed denied.

(c) Within 30 days of the mailing date of the final determination of the appeals officer the date a request for access is deemed denied, a requester or the agency may file a petition for review or other document as might be required by rule of court with the Lehigh County Court of Common Pleas.

(d) A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

SCHEDULE 3



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED:

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTOR : _____

STREET ADDRESS : _____

CITY/STATE/COUNTY (Required): _____

TELEPHONE (Optional): _____

RECORDS REQUESTED:

**Provide as much specific detail as possible so the agency can identify the information.*

DO YOU WANT COPIES? YES or NO

DO YOU WANT TO INSPECT THE RECORDS? YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO

RIGHT TO KNOW OFFICER:

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5)-DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

SCHEDULE 4

(a) A record the disclosure of which:

(i) would result in the loss of Federal or State funds by an agency or the Commonwealth;

(ii) would be reasonably likely to result in a substantial risk of physical harm to or the personal security of an individual.

(b) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security, lists of infrastructure, resources and significant special events, which are deemed critical due to their nature, and building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

(c) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.

(d) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

(e) The following personal identification information:

(i) A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal email addresses; employee number or other confidential personal identification number.

(ii) A spouse's name; marital status, beneficiary or dependent information.

(iii) The home address of a law enforcement officer or judge.

(iv) Nothing 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 an agency employee.

(v) An agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

(f) The following records relating to an agency employee:

(i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.

(ii) A performance rating or review.

(iii) The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.

(iv) The employment application of an individual who is not hired by the agency.

(v) Workplace support services program information.

(vi) Written criticisms of an employee.

(vii) Grievance material, including documents related to discrimination or sexual harassment.

(viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.

(ix) An academic transcript.

(g) A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.

(i) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.

(h) The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency.

(i) A record that reflects:

(i) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

(ii) The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.

(iii) Subparagraph (i)(ii) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.

(iv) This paragraph shall not apply to a written or Internet application or other document that has been submitted to request Commonwealth funds.

(v) This paragraph shall not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion.

(j) A record that constitutes or reveals a trade secret or confidential proprietary information.

(k) Notes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.

(l) Records that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

(m) Examinations, examination questions, scoring keys or answers to examinations. This subparagraph shall include licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education.

(n) A record of an agency relating to or resulting in a criminal investigation, including:

(i) Complaints of potential criminal conduct other than a private criminal complaint.

(ii) Investigative materials, notes, correspondence, videos and reports.

(iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.

(iv) A record that includes information made confidential by law or court order.

(v) Victim information, including any information that would jeopardize the safety of the victim.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

(B) Deprive a person of the right to a fair trial or an impartial adjudication.

(C) Impair the ability to locate a defendant or codefendant.

(D) Hinder an agency's ability to secure an arrest, prosecution or conviction.

(E) 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 the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. § 3754(b) (relating to accident prevention investigations).

(o) A record of an agency relating to a noncriminal investigation, including:

(i) Complaints submitted to an agency.

(ii) Investigative materials, notes, correspondence and reports.

(iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(iv) A record that includes information made confidential by law.

(v) Work papers underlying an audit.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of an agency 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 an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

(B) Deprive a person of the right to an impartial adjudication.

(C) Constitute an unwarranted invasion of privacy.

(D) Hinder an agency's ability to secure an administrative or civil sanction.

(E) Endanger the life or physical safety of an individual.

(p) Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.

This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the agency or

a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

(q) DNA and RNA records.

(r) An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination, or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

(s) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency, minutes of an executive session and any record of discussions held in executive session.

(t) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:

(i) The leasing, acquiring or disposing of real property or an interest in real property.

(ii) The purchase of public supplies or equipment included in the real estate transaction.

(iii) Construction projects.

(iv) This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

(u) Library and archive circulation and order records of an identifiable individual or groups of individuals.

(v) 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 as a condition of the contribution.

(w) A record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.

(x) A proposal pertaining to agency 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 agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

(y) A record or information relating to a communication between an agency and its insurance carrier, administrative service organization or risk management office. This paragraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.

(z) A record or information:

(i) Identifying an individual who applies for or receives social services; or

(ii) Relating to the following:

(A) The type of social services received by an individual;

(B) An individual's application to receive social services, including a record or information related to an agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the agency and the identity of a caregiver or others who provide services to the individual; or

(C) Eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

(aa) Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbyist disclosure).

(bb) A record identifying the name, home address or date of birth of a child 17 years of age or younger.

(bb) Financial records. — The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected. An agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.

(cc) Aggregated data. — The exceptions set forth in subsection above shall not apply to aggregated data maintained or received by an agency, except for data protected.

(dd) Construction. — In determining whether a record is exempt from access under this section, an agency shall consider and apply each exemption separately.