

**EDGMONT TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

RESOLUTION NO. 08-34

**A RESOLUTION OF EDGMONT TOWNSHIP REPEALING THE EDGMONT
TOWNSHIP RIGHT TO KNOW/PUBLIC RECORDS POLICY OF DECEMBER 26,
2002 AND ADOPTING A NEW PUBLIC RECORDS POLICY IN ACCORDANCE WITH
THE PENNSYLVANIA RIGHT TO KNOW LAW [ACT 3 OF 2008]**

WHEREAS, Edgmont Township, (the “Township”) has heretofore made its public records available for examination and inspection by citizens of the Commonwealth of Pennsylvania on a consistent basis pursuant to Pennsylvania’s *Right-to-Know Law* [Act of June 21, 1957 (P.L. 390, No. 212)] and in accordance with a written Public Records Policy adopted on December 18, 2002 and effective December 26, 2002; and

WHEREAS, Act 3 of 2008 repealed and reenacted Pennsylvania’s *Right to Know Law*; and

WHEREAS, the Township desires to repeal the Township’s Right-to-Know/Public Records Policy as adopted on December 18, 2002 and effective December 26, 2002 and adopt a new Public Records Policy in accordance with Act 3 of 2008 as set forth herein below.

NOW THEREFORE, be it **RESOLVED** that the Board of Supervisors, pursuant to and in accordance with Act 3 of 2008 hereby adopts the following Public Records Policy as the Public Records Policy of the Township.

1. Definitions.

Act – Act 3 of 2008, the Pennsylvania Right-to-Know Law.

Township – Edgmont Township.

Open Records Officer – The official or employee of the Township, appointed from time to time by official resolution or motion, to act as the Township’s Open Records Officer under this Policy and the Act.

Public Record – A record, including a financial record, of the Township that:

- (a) Is not exempt under Section 708 of the Act.
- (b) Is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree.

- (c) Is not protected by privilege

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

Requester – A person who is a resident of the United States and requests a record pursuant to the Act.

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.

Other capitalized terms used herein but not defined, shall have the meanings ascribed to them in the Act.

2. Open Records Officer Duties.

a) The Open Records Officer shall receive requests submitted to the Township pursuant to the Act, direct requests to other appropriate persons within the Township or to other appropriate persons in another agency, track the Township's progress in responding to requests and issue interim and final responses under the Act.

b) Upon receiving a request for a Public Record, the Open Records Officer shall do the following:

- 1) Note the date of receipt on the written request.
- 2) Compute the day on which the five (5) business day period for response expires.
- 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 thirty (30) days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.

c) The following information shall be posted at the Township office and on the Township website if it maintains one:

- 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 Act.

d) Maintain a copy of the Act at the Township's Office.

3. General Rules.

a) The Township shall provide Public Records under this Policy in accordance with the Act.

b) The Township shall not deny a Requester access to a Public Record due to the intended use of the Public Record by the Requester unless otherwise provided by law or this Policy.

c) Public Records shall be available for access during regular business hours of the Township and in accordance with this Policy.

d) Nothing herein shall provide or permit access to a Record(s) which is not a Public Record or which is otherwise exempt under the Act.

e) A Record in the possession of the Township shall be presumed to be a Public Record. The presumption shall not apply if:

1) The Record is exempt under Section 708 of the Act.

2) The Record is protected by privilege.

3) The Record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.

f) Nothing in this Policy or the Act shall be construed to require or permit access to any computer of the Township or any individual employee or official of the Township.

4. Requests for Public Record.

a) The Township shall not fulfill verbal requests for access to Public Records or anonymous requests for access to Public Records. Requesters who do not make their requests in writing will not be able to pursue the relief and remedies provided for in the Act.

b) A written request for access to Records may be submitted to the Open Records Officer in person, by mail, by email or by facsimile.

c) A written request shall identify or describe the Records sought with sufficient specificity to enable the Open Records Officer and the Township to ascertain which Records are being requested and shall include the name and address to which the Township should address its response. The request need not include any explanation of the Requester's request or intended use, unless otherwise required by law.

d) At the time the Township receives a written request for access to a Record, the Township shall make a good faith effort to determine if the Record requested is a Public Record and whether the Township has possession, custody or control of the Record, and to respond as promptly as possible under the circumstances existing at the time of the request. The time for response shall comply with this Policy.

5. Response to Written Request for Access.

a) Upon receipt of a written request for access to a Record, the Township shall make a good faith effort to determine if the Record requested is a Public Record and to respond as promptly as possible under the circumstances existing at the time the request is received, but shall not exceed five (5) business days from the date the written request is received by the Open Records Officer.

b) If the Township fails to send the response within five (5) business days of receipt of the written request for access, the written request will be deemed denied by the Township.

c) If the Township grants the request for access, the Township shall also, upon request, provide the Requester with a certified copy of the Public Record if the Requester pays the applicable fees.

d) Notwithstanding the foregoing, if the Township determines:

1) The request for access requires redaction of a Public Record in accordance with the Act; or

2) The request for access requires the retrieval of a Record stored in a remote location; or

3) A timely response to the request for access cannot be accomplished due to a bona fide and specified staffing limitations; or

4) A legal review is necessary to determine whether the Record is a Public Record subject to access; or

5) The Requester has not complied with the Township's Policy regarding access to Public Records; or

6) The Requester refuses to pay the applicable fees; or

7) The extent or nature of the response precludes a response within the required time period under this Policy.

e) If the Township determines that any of the conditions of subparagraph d) above, apply, the Township shall send written notice to the Requester within five (5) business days of the Township's receipt of the request notifying the Requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided.

1) If the date that a response is expected to be provided is in excess of thirty (30) days (after the fifth (5th) business day following receipt of the request), the request for access shall be deemed denied.

2) 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 Township has not provided a response by that date.

f) If the Township response states that copies of the requested Records are available for delivery at the Township office and the Requester fails to retrieve the Records within sixty (60) days of the Township's response, the Township may dispose of any copies which have not been retrieved and may retain any fees paid.

6. Creation of Public Record.

a) When responding to a request for access, the Township shall not be required to create a Record which does not currently exist or to compile, maintain, format or organize a Record in a manner which the Township does not currently compile, maintain, format or organize the Record.

b) 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.

c) The Township may respond to a Request by notifying the Requester that the Record is available through publicly accessible electronic means or that the Township will provide access to inspect the records electronically. If the Requester is unwilling or unable to access the Record electronically, the Requester may, within thirty (30) days following receipt of the Township notification, 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.

d) To the extent possible and except as otherwise provided for herein or in the Act, the contents of a Record shall be made accessible to a Requester even when the Record is physically unavailable.

7. Redaction of Public Record.

If the Township determines that a Public Record contains information which is subject to access as well as information which is not, the Township's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the Public Record and cannot be separated, the Township shall redact from the Public Record the information which is not subject to access and the Response shall grant access to the information which is subject to access. The Township shall not deny access to the Public Record if the information which is not subject to access is able to be redacted. Any information which is redacted shall be considered to be a denial of access to that information by the Township.

8. Record Possession and Retention.

a) 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 on behalf of the Township, and which directly relates to the governmental function and is not exempt hereunder or under the Act, shall be considered a Public Record of the Township.

b) Nothing in the Act shall be construed to require access to any other record of the party in possession of the Public Record.

c) A request for a Public Record in possession of a party other than the Township shall be submitted to the Open Records Officer. Upon a determination that the record is subject to access under the Act, the Open Records Officer shall assess the duplication fee and upon collection shall remit the fee to the party in possession of the Record if the party duplicated the Record.

d) Nothing herein or in the Act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of the Township.

9. Discretion as to Exempt Records. The Township may exercise its discretion to make any otherwise exempt Record accessible for inspection and copying, if all of the following apply:

- a) Disclosure of the Record is not prohibited under any of the following:
 - 1) Federal or State law or regulation.
 - 2) Judicial order or decree.
 - 3) The Act.

- b) The Record is not protected by privilege.
- c) The Township determines that the public interest favoring access outweighs any individual, Township or public interest that may favor restriction of access.

10. Denial of a Written Request.

a) A request may be denied 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 Section shall not restrict the ability to request a different Record.

b) A request which has been denied by the Township shall, in the Township's response to the Requester, contain:

- 1) A description of the record requested.
- 2) The specific reason 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 Township the denial is issued.
- 4) The date of the Township's response.
- 5) The procedure to appeal the denial under the Act.

11. Filing of Exceptions to Denial of Access.

a) If a written request for access is denied or deemed denied, the Requester may file exceptions with the Office of Open Records, as designated under the Act, within fifteen (15) business days of the mailing date of the Township's response or deemed denial. The exceptions 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.

b) The Office of Open Records shall assign an Appeals Officer to review the denial. The Appeals Officer shall have and perform the duties as set forth under the Act.

12. Judicial Review.

a) Within thirty (30) days of the mailing date of the final determination by the Appeals Officer, relating to the decision of the Township issued under this Policy or the date that a request for access is deemed denied, a 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, Delaware County. The decision of the Court of Common Pleas shall contain findings of fact and conclusions of law based upon evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

b) A petition for judicial review shall stay the release of the documents until a decision is issued.

c) The Township, the Requester and the Office of Open Records shall be served written notice of any actions commenced and shall be provided an opportunity to respond in accordance with applicable court rules.

d) The record before the court on appeal shall consist of:

- 1) The written request for access to Public Records.
- 2) The Township's response.
- 3) The Appeal filed with the Open Records Office.
- 4) The hearing transcript before the Appeals Officer, if any.
- 3) The final written determination of the Appeals Officer.

e) If a court reverses the final determination of the Appeals Officer or grants access to a Record after a request for access was denied, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a Requester if the court finds either of the following:

1) The Township willfully or with wanton disregard deprived the Requester of access to a Public Record subject to access or otherwise acted in bad faith under the provisions of the Act; or

2) The exemptions, exclusions or defenses asserted by the Township in its final determination were not based on a reasonable interpretation of law.

f) The court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to the Township or the Requester if the court finds that the legal challenge was frivolous.

g) The court may impose other such sanctions in accordance with applicable rules of court.

h) The court may impose a civil penalty of not more than \$1,500.00 if the Township denied access to a Public Record in bad faith.

i) If the Township or any public official fails to promptly comply with a court order under the Act, they may be subject to a civil penalty of not more than \$500.00 per day until the Public Records are provided.

13. Immunity.

a) Except as otherwise provided by law governing the release of Records, the Township, and its officials and employees shall not be liable for civil penalties resulting from compliance or failure to comply with this Policy or the Act.

b) The Township and its officials and employees shall not be liable for civil or criminal damages or penalties under this Policy or the Act for complying with any written public record retention and disposition schedule. Nothing herein is intended to modify, rescind or supersede any record retention and disposition schedule established pursuant to law.

14. Fees.

a) Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication shall be established by the Township by resolution from time-to-time.

b) Fees for postage shall not exceed the actual cost of mailing.

c) Fees for certification of a Public Record by the Township shall be established by the Township by resolution from time-to-time.

d) Fees for conversion of a Public Record maintained electronically or in other non-paper media, shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the native media, unless the requester specifically requests for the public record to be duplicated in the more expensive medium. Fees charged under this sub-section shall be established by the Township by resolution from time-to-time.

e) In the event that the Office of Open Records establishes fees for the same Public Records access services which are different from those established by the Township under this Policy, those fees shall apply.

f) The Township may waive the fees for duplication of a Public Record.

g) The Requester shall pre-pay to the Township an estimate of the fees when said fees are expected to exceed \$100.00.

15. Repealer and Conflicts. The Township by adoption of this Policy hereby repeals the Public Records Policy or Right to Know Policy adopted December 18, 2002 and effective December 26, 2002. It is intended that this Policy shall comply with and implement the Act. Any inconsistency between this Policy and the Act shall be resolved in favor of the provisions of the Act. Provided, however, that the provisions of the Act shall not apply in the event of a conflict with any other Federal or State law which shall be controlling.

16. Effective Date and Posting.

This Policy shall be effective as of January 1, 2009 and shall be conspicuously posted in the offices of the Township after its effective date.

This Policy **APPROVED** and **ADOPTED** this _____ day of _____, 2008.

**BOARD OF SUPERVISORS
EDGMONT TOWNSHIP**

Ronald Gravina, Chairman

Joe Conan, Vice Chairman

William C. Mackrides, Member

ATTEST:

Samantha Reiner, Manager

(Township Seal)

EDGMONT TOWNSHIP

PUBLIC RECORDS (RIGHT-TO-KNOW) REQUEST FORM

DATE REQUESTED:

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

NAME OF REQUESTER (Required): _____

STREET ADDRESS (Required): _____

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 TOWNSHIP:

Note: The Township will not fill anonymous verbal or written requests. Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law.