

**COUNTY OF ADAMS
RIGHT-TO-KNOW LAW**

**POLICIES AND PROCEDURES
AS OF JANUARY 1, 2009**

Adopted by the Adams County Board of Commissioners December 24, 2008

1. **BACKGROUND.** Act 3 of 2008, commonly known as the “Open Records Law” fundamentally changes the “Right-to-Know Law” by mandating a presumption of disclosure and shifting the burden of denial to the government, with those and other provisions of the new law to be effective January 1, 2009. The County of Adams (“County”) adopts these policies and procedures to conform to the requirements of the new law.

2. **DEFINITIONS.**

a. **Act or Open Records Law.** The Act of June 21, 1957 (P.L. 390, No. 212), commonly referred to as the “Right-to-Know Law,” as amended, 65 P.S. §§66.1-66.9 further amended by Act 3 of 2008, commonly known as the “Open Records Law,” or “Act.” The principal change in the Open Records Law is the fundamental change in presumption. The Act, in Section 305, provides:

A record in the possession of a Commonwealth agency or local agency 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 a privilege; or (3) the record is exempt from disclosure under any other Federal or State law, regulation or judicial order or decree.

b. **County.** The County of Adams.

c. **County Office(s).** Any office of the legislative and/or executive branch of the government of the County no matter where physically located, and whether headed by an appointed or an elected official, except for the following: the District Attorney; Office of District Court Administration; County Courts and its subsidiary offices (Adult Probation, Juvenile

Probation, and Domestic Relations); the Register of Wills; Office of the Sheriff; and the Office of Elections and Voter Registration.

d. **Deemed denied.** A request is deemed denied if one of the following conditions occurs: (i) the Open Records Office receiving a written Open Records Request fails to respond within the initial five (5) business day period; (ii) the Open Records Office extends the five (5) business day period by up to thirty (30) calendar days, but then fails to respond by the end of that extended period; or (iii) the Open Records Office notifies the Requester that it requires additional time to respond in excess of the permitted thirty (30) calendar day period.

e. **Mailing date.** The date affixed to a response to a request for access to records, which is to be the date the response is deposited in the U.S. Mail or, for a person submitting a request or exception, the date of the postmark on the envelope transmitting the request.

f. **Public record.** Any document that satisfies the general definition of “public record” set forth in the Act, and which does not fall within any of the exceptions set forth therein (as the definition and exceptions are amended from time to time and as the definition and exceptions are interpreted by Federal, State and/or local Courts). Records or documents that have been copyrighted by the County or County Planning Commission such as GIS records are not included in the definition of “public record.”

g. **Record.** Any document maintained by the County, in any form, whether public or not.

h. **Requester.** A person who requests a record pursuant to the Open records.

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

j. **Office of Open Records.** The administrative office established in the Pennsylvania Department of Community and Economic Development for those purposes set forth in Section 1310 of the “Right-to-Know Law.” (Act 3 of 2008).

k. **Open Records Office.** The office(s) designated by the Adams County Commissioners to receive Open Records Requests.

l. **Open Records Official.** Any official or employee designated by the Adams County Commissioners to receive Open Records Requests.

m. **Open Records Request.** Either: (i) a written request submitted to the Open Records Office or Open Records Officer asking for access to a document, a copy of a document, or information purported to be in the possession of the County; or (ii) a written request (but not appeal) presented to the Open Records Office that invokes the Act.

n. **Solicitor.** Office of the County Solicitor.

3. **OPEN RECORDS FUNCTIONS.**

a. **Open Records Office.** The function of the Open Records Office is to receive all Open Records Requests directed to any County office other than Court offices, track the progress in responding to Open Records Requests, prepare and issue interim and final responses to Open Records Requests, and coordinate the response.

b. **Open Records Official.** Pursuant to the Act, the Adams County Commissioners shall designate an official or employee of the County as the County’s chief Open Records Officer responsible for receiving, tracking, and responding to an Open Records Request. In the absence or unavailability of the Open Records Officer, an employee of the Open Records Office may act as the Deputy Open Records Officer.

c. **Public Records Access.** The Open Records Officer shall determine on an ad hoc basis the building and room where records will be made available to a Requester and the

hours of availability. In either instance the Open Records Officer has the discretion to establish written policies governing the use of that room including, but not limited to, the hours of access, the need and adequacy of proof of residency, restrictions or prohibitions on the removal of records, the use of written requests, and the ability of a Requester to bring his or her own copying or other equipment into the room.

4. PROCEDURE FOR RESPONDING TO OPEN RECORDS REQUESTS.

a. Requests.

(1) **Oral request.** The Act does not require that the County respond to oral requests. Each County Office and the Open Records Officer shall refuse to accept any oral request unless the requests are routine, use of a formal request would delay the process, and the Requester realizes that oral requests may not be appealed.

(2) **Anonymous Requests.** The Act does not require that the County respond to anonymous requests. Each County office and the Open Records Officer shall refuse to accept any written request that does not identify the Requester.

(3) **Non-anonymous written requests.** The Act requires that the County act upon each non-anonymous written request when such request is submitted in person, by mail, facsimile, or e-mail. Requests submitted by an electronic method, by facsimile or by e-mail are permitted by the Act.

(i) **Contents of a request.** The Act sets forth requirements for the contents of a written request. The request must include the name of the Requester and the address to which the County should address its response. The request should identify or describe the records sought with sufficient specificity to enable the County to ascertain which records are being requested.

(ii) **Reason for the request.** The Act provides that the Requester need not to include the reason for the request or the intended use for the records. Therefore, the County cannot insist that such a statement be provided, nor can it reject or refuse a request on the grounds that no such reason was given.

(iii) **Forms.** The County may create or adopt forms for use by Requesters in preparing written requests. The County will also accept any standard request forms published by the Office of Open Records.

(4) **Legal Residency Requirement.** The Act only requires that the County provide a Requester with access to a public record if the Requester is a legal resident of the United States. In determining whether a Requester is a legal resident of the United States, the County may, in its discretion, require that the Requester produce identification demonstrating that status.

b. **Submittal of Open Records Requests**

(1) The Office of the Solicitor is the office designated by the County as the recipient of all Open Records Requests addressed to the County. All Open Records Requests are to be addressed to the Office of the Solicitor. The Solicitor's address is the Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, PA 17325 (717) 337-5911 (telephone); and (717) 334-9542 (facsimile). The County shall post this information on its website and shall post it at a location that is publicly accessible.

(2) The five (5) business day period does not begin to run until the Open Records Request is received by the Open Records Officer or an employee assigned to the Open Records Office, the five (5) business day period has not yet begun.

c. **County's Duty to Provide a Prompt Response to an Open Records Request.**

(1) **Five (5) business day period.** Section 901 of the Act provides that, upon receipt of a written Open Records Request, the County must make a good faith effort to determine if the record requested is a public record or financial record, and to respond as promptly as possible under the circumstances existing at the time of the request. The time for response shall not exceed five (5) business days from the date the written request is received by the County's Open Records Officer. The Act provides that either a final or an interim written

response must be made within five (5) business days from the date the Open Records Officer received the request. If the Open Records Office fails to send the response within that time period, the Open Records Request is deemed denied. Section 901 also provides that all applicable fees shall be paid in order to receive access to any requested records.

(2) **Extension period.** Although the Act contemplates that Requesters will receive final responses within the five (5) business day period, Section 902 provides the County with certain specific exceptions that provide for up to thirty (30) calendar days extension. If an extension is invoked and then there is no timely final response, the Open Records Request is deemed denied, unless the Requester agrees in writing to further extension. If the Open Records Office notifies the Requester that it needs more than the maximum of thirty (30) days, the request is deemed denied.

(d) **Processing of Open Records Request by the Open Records Office.**

(1) Upon receiving a written Open Records Request, the Open Records Office, in conjunction with the Solicitor shall, at a minimum, promptly complete the following tasks:

- (a) Date-Stamp the request.
- (b) Assign a tracking number to the request.
- (c) Compute the day on which the five (5) business day period will expire, and make a notation of that date on the request.
- (d) Make a paper copy of the request, including all documents submitted with it and the envelope (if any) in which it came. This copy will be provided to the Solicitor for their review.
- (e) Create an official file for the retention of the original request, interoffice communications related to the request, and other documentation.

(f) Record the request in the paper and/or electronic system used by the County for tracking Open Records Requests.

(2) The following standards shall be for the purpose of determining the five (5) business day period.

(a) A business day shall be any Monday, Tuesday, Wednesday, Thursday, or Friday, except those days when the offices of the County are closed for all or part of the day due to a holiday, due to severe weather (such as a blizzard or ice storm), due to natural or other disaster, or due to the request or direction of local, state, or federal law enforcement or emergency services officials.

(b) Any Open Records Request received by the Open Records Office after the close of its regular business hours shall be deemed to have been received by that office on the following business day. For example, a facsimile transmission received at 4:45 p.m. on a Friday is deemed to be received on the following Monday (unless that Monday is a holiday).

(c) For purpose of determining the end of the five (5) business day period, the day that an Open Records Request is received (or deemed to be received) is not counted: the first day of the five (5) business day period is the County's next business day. For example, if an Open Records Request is received on a Tuesday, the first three days of the period are Wednesday, Thursday, and Friday; the next five days of the period are Monday through Friday of the following week.

e. **Response, in General.**

(1) The Act of providing a Requester with physical access to a document or a copy of the requested document is a "response" for purposes of the Act.

(2) Where timely access is not provided in accordance with (1), the Act requires that the County's response be in writing. The Open Records Official has the duty to prepare and send written responses under the Act and this policy.

(3) In preparing a written response, the Open Records Official will consult, as necessary, with the Solicitor, and other County officials and employees from the offices that hold the record, or that have an interest in the records.

(4) The Open Records Office shall send written responses to Requesters by U.S. Mail and, in its discretion, may also use the following means: facsimile transmission; e-mail; overnight or parcel delivery service; or courier delivery.

f. Physical Access to Public Records.

(1) The Act requires that, unless otherwise provided by law, the public records of the County must be accessible for inspection by any Requester during the regular business hours of the County. Unless the County adopts written policies to the contrary, the regular business hours of the County for purpose of the Act are from 8:00 a.m. until 4:30 p.m. on any business day.

(2) The County is not required to create a public record that does not already exist, nor is the County required to compile, maintain, format, or organize a public record in a manner in which the County does not currently do so.

g. Initial Written Responses.

(1) The Act requires that the County provide a final response to a Open Records Request within five (5) business days, unless one or more specific conditions exists, and the County gives the Requester written notice that additional time will be required.

(2) The circumstances under which the County may obtain an extension of time in which to provide a response are set forth in Section 902 of the Act.

i. **Final Written Responses.**

(1) **Types of final responses.** The Act provides for three types of written final responses.

(a) The County grants the entire request.

(b) The County denies the entire request.

(c) The County grants part of the request, and denies the remainder.

(2) **Deemed denials.** The failure of the County to make a timely response is deemed a denial under the Act.

(3) **Final responses that deny requests, either in whole or in part.**

(a) A response that denies a request (either in whole or in part) will list all of the specific reasons relied on by the County for denying the request.

(b) In the event that the County's response is a denial, the response shall also contain a notice informing the Requester of his or her right to file exceptions, and shall set forth the name and mailing address of the Commonwealth Office of Open Records.

j. **Redaction.**

“Redaction” means the eradication of a portion of a document while retaining the remainder. Redaction must be performed in such a way as to prevent the Requester from having access to the redacted information. For instance, merely crossing out text usually does not suffice if the underlying words can be made out by careful examination. An example of effective redaction is to create a copy of an existing document; to completely obliterate the

selected text using a black marker; and to copy that document (so that the obliterated text on the first copy cannot be read through the marker ink). Other techniques may also be used. In complying with the Act's redaction provisions (the County is not required to alter their original records).

m. Duplication of public records.

(1) A public record must be available for duplication by a Requester. The County does not make duplication equipment available to a Requester, but does provide other means by which a Requester may obtain copies, which is by having County personnel make the copies.

(2) The County has the discretion to establish its own policies regarding how records are duplicated. The County will assign its own personnel to make the duplications requested by the Requester; or it may contract for duplication services and require that the Requester pay the contractor for those services. In any of these circumstances, the County will charge the Requester a reasonable fee that is consistent with fee schedules established by the Pennsylvania Office of Open Records.

5. APPEAL.

a. Time for filing Appeal.

(1) Per Section 1101 of the Act, appeals from the Pennsylvania Office of Open Records' written denial must be filed with the Office of Open Records within fifteen (15) business days of the mailing date of the written denial.

b. Content of Appeal.

(1) The appeal shall state the grounds upon which the Requestor asserts that the record is a public record, legislative record, or financial record.

(2) The appeal shall address any grounds stated by the County for delaying or denying the request.

6. APPEALS TO COMMON PLEAS COURT.

Where the Office of Open Record's final determination upholds the refusal of access to a document, the Requester or County may, within thirty (30) days of the mailing date of that final determination, file a Petition for Review in Common Pleas Court, pursuant to chapter 13 of the Act.

7. RETENTION AND DISPOSAL OF PUBLIC RECORDS.

There are statutes, regulations, and other laws that regulate the County's retention and disposition of records. The County must follow the mandates of these laws. The Act does not modify, rescind, or supersede any retention and disposition schedule established pursuant to those laws.

8. WRITTEN POLICIES AND REGULATIONS.

The County and the Open Records Office each has the discretion to adopt other written polices consistent with the Act and these Polices and Procedures, as amended from time to time, and which they deem to be necessary or prudent, consistent with the Act. For example, written polices may be adopted governing the manner in which access to records will be provided, the need and adequacy of proof of residency, restrictions or prohibitions on the removal of records, the availability of a Requester to bring their own copying or other equipment into the offices of the County, and similar considerations.

9. FEES AND CHARGES.

(a) Fees and charges shall be set (and amended when needed), as appropriate by the Open Records Officer after consultation with the County Solicitor, and using standards provided for in the Act and by the Pennsylvania Office of Open Records.

(b) The Act requires that, in various circumstances, The County must redact information from records. The Act also provides that additional fees may be imposed if the

County necessarily incurs costs for complying with a request. However, such fees must be reasonable. Under this provision, the County is permitted to charge a reasonable fee for redaction services.

(c) The County may, in its discretion, insist that payment be made by certified check. In the alternative, the County may insist that an ordinary check must first have cleared prior to provision of copies. If the fee is for copying only, the County shall allow access to the records, but shall refuse to make or provide copies until the fee is paid. If the fee is for some other service that is necessary in order for access to be provided, and which is authorized by the Pennsylvania Office of Open Records, then the County shall deny access until the fee is paid.

(d) Nothing in this Policy shall prohibit the County and a third party from entering into an agreement to provide certain records for a mutually agreed upon fee.

(e) Nothing in this Policy shall prohibit the County from exercising its discretion to waive collection of fees for documents to non-profit organizations and governmental entities, agencies, and authorities.

(f) Election law or policies of the Adams County Board of Elections may provide that certain records and/or data can be provided to candidates or political organizations at no cost. Nothing in this Policy shall supersede Election law requirements or the policies of the Adams County Board of Elections.

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