

OPEN RECORDS POLICY

pursuant to the
Right to Know Law
(Act 3 of 2008; 65 P.S. §67.101 *et seq.*)

INTRODUCTION:

This policy has been created to assist the public with requesting “public records” and the Local Agency Open Records Officer with complying with such requests. This policy in no way modifies, amends, rescinds or supersedes the record retention policy of the Local Agency established pursuant to law, regulation, policy or other directive.

A. Consistent with statute. It is intended that this policy be consistent with the Right to Know Law, and therefore, anything contained in this policy appearing to be inconsistent or contrary to the Right to Know Law should be read so as to be consistent and in accordance with the Right to Know Law. (See 65 P.S. §§67.504(a); 67.1308)

B. Posting. This policy and the Resolution adopting this policy shall be posted prominently in the municipal building along with the Fee Schedule Resolution; notice of the name, address and telephone number for the Open Records Officer; contact information for the Pennsylvania Office of Open Records; and copies of forms created by the Office of Open Records upon which to make a “public records” request.
(See 65 P.S. §67.504(b))

C. Form of “public record”; availability. A “public record” shall be provided in the medium requested if the “public record” exists in that medium; otherwise, the “public record” will be produced in the medium in which it exists. When responding to a request for access, the Local Agency shall not be required to create a “public record” which does not currently exist or to compile, maintain, format or organize a “public record” in a manner in which the Local Agency does not currently compile, maintain, format or organize the “public record.” “Public records” shall be available for access during normal business hours. Nothing in this policy shall be construed to require access to any computer either of the Local Agency or the employee of the Local Agency.
(See 65 P.S. §§67.701; 67.705)

D. Response time period. The Local Agency will respond within five (5) business days; such response will be one of the following: (1) production of copies/permission to review; (2) a denial; or (3) a request for more time. Failure of the Local Agency to respond within five (5) business days shall be deemed a denial.
(See 65 P.S. §67.901)

E. Fees. All applicable fees shall be paid in order to receive access to the “public record” requested as set forth hereinafter. (See 65 P.S. §67.901) Where copies of a “public record” are requested to be made by the Local Agency for the requestor and unless the estimated fees are anticipated to exceed \$100.00, payment of the applicable fees shall be payable when the copies are available to be picked up by the requestor, or if mailed, upon receipt of the copies.

Prior to granting a request for access, the Local Agency may require a requester to prepay an estimate of the fees authorized if the fees required to fulfill the request are expected to exceed \$100.00. Except as otherwise provided by statute, no other fees may be imposed unless the Local Agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for the Local Agency's review of a record to determine whether the record is a “public record” or “financial record” subject to access in accordance with this act.

(1) Postage. Fees for postage may not exceed the actual cost of mailing.

(2) Duplication. 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 and/or approved by the Office of Open Records. The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.

(3) Complex and extensive data sets, including geographic information systems and integrated property assessment lists. Fees for copying may be based on the reasonable market value of the same or closely related data sets; however, the preceding shall not apply to a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly publication, press association or radio or television station, for the purpose of obtaining information for publication or broadcast or a request by a nonprofit organization for the conduct of educational research. Nevertheless, such information shall still be subject to postage and duplication fees.

(4) Certification. An agency may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.

(5) Conversion to paper. If a “public record” is only maintained electronically or in other nonpaper 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 “public record” to be duplicated in the more expensive medium.

(6) Enhanced electronic access. If the Local Agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by the Right to Know Law, the Local Agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by the Right to Know Law. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the Local Agency.

(See 65 P.S. §67.1307)

DEFINITIONS: (See 65 P.S. §67.102)

“Aggregated data.” A tabulation of data which relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.

“Confidential proprietary information.” Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

“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.

“Homeland security.” Governmental actions designed to prevent, detect, respond to and recover from acts of terrorism, major disasters and other emergencies, whether natural or manmade. The term includes activities relating to the following:

- (1) emergency preparedness and response, including preparedness and response activities by volunteer medical, police, emergency management, hazardous materials and fire personnel;
- (2) intelligence activities;
- (3) critical infrastructure protection;
- (4) border security;
- (5) ground, aviation and maritime transportation security;
- (6) biodefense;
- (7) detection of nuclear and radiological materials; and
- (8) research on next-generation securities technologies.

“Judicial Agency.” Includes the following: Court of Common Pleas of Blair County; all of Blair County’s Magisterial District Judge Offices; Blair County Court Administration; Blair County’s Adult and Juvenile Probation Offices; Blair County’s Office of Domestic Relations; and Blair County’s Office of Cost and Fines.

“Local Agency.” As used herein shall mean County of Blair with the exception of a Judicial Agency.

“Office of Open Records.” The Commonwealth of Pennsylvania Office of Open Records established in the Pennsylvania Department of Community and Economic Development pursuant to section 1310 of Act 3 (65 P.S. §67.1310).

“Personal financial information.” An individual’s personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances.

“Privilege.” The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.

“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.

“Requester.” A person that is a legal resident of the United States and requests a record pursuant to this act.

“Social services.” Cash assistance and other welfare benefits, medical, mental and other health care services, drug and alcohol treatment, adoption services, vocational services and training, occupational training, education services, counseling services, workers' compensation services and unemployment compensation services, foster care services, services for the elderly, services for individuals with disabilities and services for victims of crimes and domestic violence.

"Trade secret." Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:
(1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.

FINANCIAL RECORDS OF A JUDICIAL AGENCY:

Requests for records to a Judicial Agency should be directed to those entities in accordance with Pennsylvania Rules of Judicial Administration No. 509.

PUBLIC RECORDS OPEN FOR INSPECTION:

A record in the possession of the Local Agency shall be presumed to be a “public record” unless:

- (1) the record is protected by a “privilege”;
- (2) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree; or
- (3) the record is on the EXEMPT list contained in this policy.

The burden of proving that a record of the Local Agency is exempt from public access shall be on the Local Agency receiving a request by a preponderance of the evidence.

(See 65 P.S. §§67.305(a); 67.708(a)(1))

RECORDS EXEMPT FROM BEING PUBLIC RECORDS:

The list of records numbered below are exempt and are not defined as being “public records” subject to inspection; however, please note instances where certain records are further defined to be “public records” (**provisions are bolded and underlined**).

In determining whether a record is exempt or is a “public record,” the following rules shall apply:

(i) The exemptions set forth below shall not apply to “financial records”, except that the Local Agency may redact that portion of a “financial record” protected under subsection (1), (2), (3), (4), (5), (6), (14) or (15). The Local Agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.

(ii) The exemptions set forth below shall not apply to “aggregated data” maintained or received by the Local Agency, except for data protected under (1), (2), (3), (4) or (5).

(iii) In determining whether a record is exempt from access under this section, the Local Agency shall consider and apply each exemption separately.

(1) A record, the disclosure of which:

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

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

(2) A record maintained by the Local Agency 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 a record that is designated classified by an appropriate Federal or State military authority.

(3) 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:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(ii) lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and

(iii) 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.

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

(5) 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.

(6)(i) The following personal identification information:

(A) 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 e-mail addresses, employee number or other confidential personal identification number.

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

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

(ii) 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 employee of the Local Agency.

(iii) 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.

(7) The following records relating to an employee of the Local Agency:

(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.

(ii) A performance rating or review.

(iii) The result of a civil service or similar test administered by the 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 the Local Agency may be disclosed.

(iv) The employment application of an individual who is not hired by the Local 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 the Local Agency that results in demotion or discharge.

(ix) An academic transcript.

(8)(i) 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.**

(ii) 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.**

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

(10)(i) A record that reflects:

(A) 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, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

(B) The strategy to be used to develop or achieve the successful adoption of a budget or regulation.

(ii) Subparagraph (i)(A) shall apply to agencies subject to 65 Pa. C.S. §701 *et seq.* (relating to open meetings; a/k/a The Sunshine Act) in a manner consistent with 65 Pa.C.S. §701 *et seq.* **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. §701 et seq. shall be a public record.**

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

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

(12) Notes and working papers prepared by or for a public official or Local 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.

(13) Records that would disclose the identity of an individual who lawfully makes a donation to the Local 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.

(14) A record of the Local 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 a Local Agency's policy department or in a traffic report.

(15) A record of the Local Agency relating to a noncriminal investigation, including:

- (i) Complaints submitted to the Local 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 the Local 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 the Local 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 the Local Agency's ability to secure an administrative or civil sanction.
 - (E) Endanger the life or physical safety of an individual.

(16)(i) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency.

(ii) Minutes of an executive session and any record of discussions held in executive session.

(17)(i) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the Local Agency relative to the following:

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

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

(C) Construction projects.

(ii) 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.

(18) 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 the Local Agency proposal evaluation committees established under 62 Pa.C.S. §513 (relating to competitive sealed proposals).

(19) A record or information relating to a communication between the Local 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.

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

(21)(i) 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.

(ii) 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.

(22) 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.

(23) 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 the Local Agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the Local 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.

(See 65 P.S. §67.708(b); (c); and (d))

REQUESTS:

Verbal or anonymous written requests for access to records may be answered by the Local Agency; however, 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. (See 65 P.S. §67.702)

A written request for access to records may be submitted in person, by mail, by e-mail, or by facsimile. A written request containing the information set forth below must be addressed to the Local Agency Open Records Officer. (See 65 P.S. §67.703)

Employees of the Local Agency shall be directed to 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 Local Agency to ascertain which records are being requested and shall include the name and address to which the Local Agency 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. (See 65 P.S. §67.703)

The Local Agency may make its records available through any publicly accessible electronic means. The Local Agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the Local Agency will provide access to inspect the record electronically. However, if the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the agency notification, submit a written request to the Local Agency to have the record converted to paper. The Local

Agency shall provide access to the record in printed form within five (5) days of the receipt of the written request for conversion to paper. (See 65 P.S. §67.704)

OPEN RECORDS OFFICER:

The Open Records Officer shall receive requests submitted to the Local Agency under the Right to Know Law, direct requests to other appropriate persons within the Local Agency or to appropriate persons in another agency, track the Local Agency's progress in responding to requests and issue interim and final responses.

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-business day period 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 section 1101(b) of Act 3 (65 P.S. §67.1101(b)).

(See 65 P.S. §67.502(b))

THIRD-PARTY POSSESSION OF PUBLIC RECORDS:

A "public record" that is not in the possession of the Local Agency but is in the possession of a party with whom the Local Agency has contracted to perform a governmental function on behalf of the Local Agency, and which directly relates to the governmental function and is not exempt under the Right to Know Law, shall be considered a "public record" of the Local Agency. However, nothing shall be construed to require access to any other record of the party in possession of the "public record."

A request for a "public record" in possession of a party other than the Local Agency shall be submitted to the Open Records Officer of the Local Agency. Upon a determination that the record is subject to access under the Right to Know Law, the Open Records Officer shall assess the duplication fee established hereunder and upon collection shall remit the fee to the party in possession of the "public record" if the party duplicated the "public record."

(See 65 P.S. §67.506(d))

REDACTION:

If the Local Agency determines that a “public record” or “financial record” contains information which is subject to access as well as information which is not subject to access, the Local Agency’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” or “financial record” and cannot be separated, the Local Agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The Local Agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which the Local Agency redacts in accordance with this subsection shall be deemed a denial. (See 65 P.S. §67.706)

RESPONSE TO REQUEST FOR EXTENSION OF TIME:

Upon receipt of a written request for access, the Open Records Officer for the Local Agency shall determine if one of the following applies:

- (1) the request for access requires redaction of a record;
- (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 agency’s policies regarding access to records;
- (6) the requester refuses to pay applicable fees; or
- (7) the extent or nature of the request precludes a response within the required time period.

Upon a determination that one of the factors listed above applies, the Open Records Officer shall send written notice to the requester within five (5) business days of receipt of the request for access. 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 thirty (30) days, following the five (5) business days, 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. 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 Local Agency has not provided a response by that date.

(See 65 P.S. §67.902)

DENIAL OF REQUEST:

The Local Agency may not deny a requester access to a “public record” due to the intended use of the “public record” by the requester. Access may only be denied as provided for by law. (See 65 P.S. §67.302(b))

If the Local Agency’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 this act.
- (See 65 P.S. §67.903)

APPEAL OF DENIAL:

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 in the case of law enforcement records, the Blair County elected District Attorney’s designated appeals officer, within fifteen (15) business days of the mailing date of the Local Agency’s response or within fifteen (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” or “financial record” and shall address any grounds stated by the Local Agency for delaying or denying the request.

When an appeal is filed, the Office of Open Records shall assign an appeals officer to review the denial, except if the appeal is with respect to law enforcement records, then the respectively appointed appeals officer shall hear the appeal. Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the Local Agency within thirty (30) days of receipt of the appeal. If the appeals officer fails to issue a final determination within thirty (30) days, the appeal is deemed denied. Prior to issuing a final determination, a hearing may be conducted. The determination by the appeals officer shall be a final order. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the Local Agency.

A person other than the Local Agency or requester with a direct interest in the record subject to an appeal, within fifteen (15) days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, may file a written request to provide information or to appear before the appeals officer or to file information in support of the requester’s or agency’s position. Copies of the written request shall be sent to the agency and the requester. The appeals officer may grant a request if:

- (i) no hearing has been held;
- (ii) the appeals officer has not yet issued its order; and
- (iii) the appeals officer believes the information will be probative.

(See 65 P.S. §67.1101)

JUDICIAL REVIEW:

Within thirty (30) days of the mailing date of the final determination of the appeals officer relating to a decision of the Local Agency or of the date a request for access is deemed denied, a requester or the Local Agency may file a petition for review or other document as required by rule of court with the Blair County Court of Common Pleas. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision. A petition for review shall stay the release of documents until a decision is issued. (See 65 P.S. §67.1302)

MISCELLANEOUS ISSUES:

Disruptive requests.

The Local Agency may deny a requester access to a “public record” if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Local Agency. A denial hereunder shall not restrict the ability to request a different “public record.” (See 65 P.S. §67.506(a))

Disaster.

The Local Agency may deny a requester access when timely access is not possible due to fire, flood or other disaster. To the extent possible, the contents of a “public record” shall be made accessible to a requester even when the record is physically unavailable. (See 65 P.S. §67.506(b))

Certified copies.

If the Local Agency’s response grants a request for access, the Local Agency shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees. (See 65 P.S. §67.904)

Record discard.

If the Local Agency response to a requester states that copies of the requested records are available for delivery at the office of the Local Agency and the requester fails to retrieve the records within 60 days of the Local Agency’s response, the Local Agency may dispose of any copies which have not been retrieved and retain any fees paid to date. (See 65 P.S. §67.905)

(1/09)