

**UPPER CHICHESTER TOWNSHIP
OPEN RECORDS LAW
POLICIES AND PROCEDURES**

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. Upper Chichester Township (hereinafter "Township") embraces these reforms and wishes to implement these changes immediately. The Open Records Law substantially amended the Act of June 21, 1957 (P. L. 390, No. 212), and Act 2002-50 (P. L. 663, No. 50), 65 P. S. §§ 66.1-66.9, commonly referred to as the "Right-to-Know Law," and therefore requires the Township to amend these policies and procedures to allow early implementation of the Open Records Law.

DEFINITIONS

A. Act or Open Records Law - The Act of June 21, 1957 (P. L. 390, No. 212), as amended by Act 2002-50, 65 P.S. §§ 66.166.9, commonly referred to as the "Right to-Know Law," and, Act 3 of 2008, commonly referred to as the "Open Records Law".

B. Township - Upper Chichester Township, Delaware County, Pennsylvania.

C. Township Office - Any office or department of the government of Upper Chichester Township, whether headed by an appointed or an elected official.

D. Deemed Denied - A request is deemed denied if one of the following conditions occurs:

(I) the Open Records Official receiving a written Open Records Request fails to respond within the initial 5-business-day period;

(II) the Open Records Official extends the 5-business-day period by up to 30-calendar days, but then fails to respond by the end of that extended period; or

(III) the Open Records Official notifies the Requester that it requires additional time to respond in excess of the permitted 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 United States Mail or, for a person submitting a request or exceptions, the date of the postmark on the envelope transmitting the request or exceptions.

F. Open Records Official - Any official or employee designated by the Township to receive Open Records Requests.

G. Open Records Request - A written request submitted to the Open Records Official asking for access to a Record, a copy of a Record or information purported to be in the possession of the Township.

H. Record - Any document maintained by the Township, in any form, whether public or not.

I. Requester - A person who requests a record pursuant to the Open Records Law.

J. Response - The Open Records Official's reply to a request made pursuant to the Act. A Response may be either the act of providing the Requester with access to a record, or the Open Records Official's written notice granting, denying or partially granting and partially denying access to a record.

FUNCTIONS

Open Records Official - The function of the Open Records Official is to receive all Open Records Requests directed to the Township; to coordinate the preparation of a Response; to track the progress in responding to Open Records Requests; and, to prepare and issue Responses to Open

Records Requests. Pursuant to the Act, the Township shall designate an employee as the Open Records Official.

PROCEDURE

A. Requests

(1) Oral requests - The Act does not require that the Township respond to oral requests. The Open Records Official shall refuse to accept any oral request.

(2) Anonymous requests - The Act does not require that the Township respond to Anonymous requests. The Open Records Official shall refuse to accept any written request that does not identify the Requester.

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

(I) Contents of a request - The Act sets forth various specifications for the contents of a written request. Thus, the request must include the name of the Requester and the address to which the Township should address its Response. The request should identify or describe the Records sought with sufficient specificity to enable the Township to ascertain which Records are being requested.

(II) Forms - The Township may create or adopt forms for use by Requesters in preparing written requests.

(4) Citizenship requirement. The Act provides that the Township provide a Requester with access to a Public Record if the Requester is a citizen of the United States. The Township may require that the Requester produce photographic identification, to determine proof of citizenship.

B. Submittal of Open Records Requests

(1) All Open Records Requests are to be addressed to: Upper Chichester Township, Open Record Request, PO Box 2187, Boothwyn, PA 19061. The Township shall post this information to 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 Township's designated Open Records Official has received a request.

C. Township's Duty to Provide a Prompt Response to an Open Records Request.

(1) Five (5) business-day period. Section 3.3(a) of the Act provides that, upon receipt of a written Open Records Request, the Township must make a good faith effort to determine if the requested Record is a Public Record and to respond as promptly as possible under the circumstances existing at the time of the request, and that this time shall not exceed five (5) business days from the date the written request is received by the Township's Open Records Official. The Act provides that either a final or an interim written response must be made within five (5) business days from the date that the Open Records Official received the request. If the Open Records Office fails to respond within that time period, the Open Records Request is Deemed Denied.

(2) 30-calendar-day extension period. Although, in general, the Act and this Policy contemplates that Requesters will receive a Response within the five (5) business day period, it also provides the Township with certain specific exceptions to invoke a single extension of time, which may not exceed 30 calendar days. If an extension is invoked and then there is no timely Response, the Open Records Request is Deemed Denied. Likewise, if the Open Records Official notifies the Requester that it needs more than the maximum of 30 days, the request is Deemed Denied.

D. Processing of Open Records Requests

(1) Upon receiving an Open Records Request, the Open Records Official shall, at a minimum, promptly complete the following tasks:

(a) Date-stamp the Open Records Request.

(b) Compute the day on which the five (5) business day period will expire and make a notation of that date.

(c) Make a paper copy of the Open Records Request, including all documents submitted with it and the envelope (if any) in which it was received.

(d) Record the Open Records Request in the system used by the Township for tracking Open Records Requests.

(2) For purposes of determining the five (5) business-day period:

(a) A business day shall be from 8:00 a.m. until 4:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday, except those days when the offices of the Township are closed for all or part of a 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 officials.

(b) Any Open Records Request received after the close of its regular business hours shall be deemed received by that office on the following business day.

(c) For purposes of determining the end of the five (5) business day period, the day that an Open Records Request is received (or deemed received) is not counted. The first day of the five (5) business day period is the Township'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 fourth and fifth business days would be Monday and Tuesday of the following week. The Response is due by the close of business on that Tuesday.

E. Responses

(1) The act of providing a Requester with physical access to a document or a copy of the requested Record, in the Open Records Office, is a "Response" for purposes of this Open Records Policy.

(2) Where timely access is not provided in accordance with (1), the Act requires that the Township's Response be in writing. The Open Records Official has the duty to prepare and send written Responses. In preparing a written Response, the Open Records Official may consult, as necessary, with the Solicitor, and other Township officials and employees having control, knowledge or concern of the Records.

(3) The Township is not required to create a Public Record that does not already exist, nor is the Township required to compile, maintain, format, or organize a Public Record in a manner in which the Township does not currently do so.

(4) The Open Records Official shall send written Responses to Requesters by one of the following, in its discretion: United States mail, facsimile transmission; electronic transmission; overnight or parcel delivery service; or, courier delivery.

F. Physical Access to Public Records - The Act requires that, unless otherwise provided by law, the Public Records of the Township must be accessible for inspection by any Requester during the regular business hours of the Township.

G. Interim Written Responses - The Act requires that the Township must provide a Response to an Open Records Request within five (5) business days unless one or more specific conditions are satisfied and the Township gives the Requester written notice that additional time will be required. That notice is referred to as an "Interim Response." The circumstances in which the Township may obtain an extension of time in which to provide a final Response are set forth in the Open Records Law.

H. Written Final Responses

(1) Types of final Responses. The Act provides for three types of written final Responses:

(a) The Township grants the entire Open Records Request.

(b) The Township refuses the entire Open Records Request.

(c) The Township grants part of the Open Records Request and refuses the remainder.

(2) Deemed Denials. The failure of the Township to make a timely final Response is a Deemed Denial under the terms of the Act.

(3) Final Responses that deny Open Records Requests, either in whole or in part shall list all of the specific reasons relied upon by the Township for denying the Open Records Request.

I. Redaction - "Redaction" means the eradication of a portion of a record while retaining the remainder. A Record shall be redacted when parts of the Record are not Public Record or are protected and shall not be disclosed as set forth in the Act. Redaction shall be performed in such a way as to maintain the confidentiality or security of the protected information. Thus, 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 photocopy of an existing document; to completely obliterate the selected text using a black marker; and to photocopy 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 Open Records Law's redaction requirements, The Township is not required to alter their original records.

K. Duplication of Public Records.

(1) A Public Record shall be accessible for duplication by a Requester. The Township does not make duplication equipment available to a Requester but shall provide other means by which a Requester may obtain copies, through Township personnel.

(2) The Township will assign its own staff 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. The Township shall charge the Requester a reasonable fee(s) that is consistent with the prevailing charges in the geographic location where the duplication occurs. Resolution of the Township shall establish such fees from time to time.

RETENTION AND DISPOSAL OF PUBLIC RECORDS

There are statutes, regulations and other laws that regulate the Township's retention and disposition of Records. The Township shall follow the mandates of these laws and regulations. Neither the Act nor this policy modifies, rescinds or supersedes any retention or disposition schedule established pursuant to law or other regulation.

9. FEES AND CHARGES.

(a) Fees and charges as permitted by the Act are hereby established by the Township Fee Schedule and may be amended by the Township from time to time as appropriate, using the standards provided in the Act.

(b) The Act requires that, in various circumstances, the Township shall redact information from records. The Act provides that additional fees may be imposed if the Township necessarily incurs costs for complying with a request. However, such fees must be reasonable. The Open Records Official may establish such fees, depending upon the volume and complexity of the Records requested.

(c) The Township may, in its discretion, insist that payment be made by certified check. In the alternative, the Township may insist that a personal or business account check must first have cleared. If the fee is for copying only, the Township may allow access to the Records but shall refuse to make copies until the fee is paid. If the fee is for redaction or some other service that is necessary in order for access to be provided, the Township may deny access until the fee is paid.