

**UPPER MERION TOWNSHIP**



**POLICY AND PROCEDURE**

No. A1-105..05

Supersedes: A1-105.04

Effective:

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Dated: January 9, 2003

Department: ADMINISTRATION

Subject: RIGHT TO KNOW POLICY

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**I. GENERAL PURPOSE**

The general purpose of this policy is:

- A. To recognize the value of making information available to the public and to memorialize the Township's commitment to continually improve public access to public information and foster public participation in the decision-making process;
- B. To provide access to public records in the possession of the Township consistent with Act 3 of 2008, the Pennsylvania Right-To-Know (RTKL) Law, as amended, which became effective January 1, 2009 and creates a presumption of openness regarding the records of the Township;
- C. To appoint a Township Open Records Officer who will oversee the implementation of the Township Right to Know Policy (RTKP);
- D. To provide a written framework outlining the procedures and policies necessary to provide for access to records as contemplated under the RTKL; and
- E. To provide for the prompt and timely response to requests for records made under the RTKL.

**II. DEFINITIONS**

A complete list of Definitions when used in Act 3 shall have the meanings given to them as found in Appendix A, unless the context clearly indicates otherwise.

### **III. ESTABLISHMENT OF TOWNSHIP OPEN RECORDS OFFICER**

#### **A. Appointment of Open Records Officer**

1. Upper Merion Township hereby designates the Assistant to the Township Manager as the Township's Open Records Officer (ORO). The ORO may be reached at the Township Administration Building, 175 "West Valley Forge Road, King of Prussia, PA 19406.

2. All requests for public records shall be administered by the Township ORO or departmental designee. The ORO will ensure that the operating procedures described herein are followed.

### **IV. IDENTIFICATION OF RECORDS**

#### **A. Public Records Under the Right to Know Law**

1. A "public record" is defined as any record, including financial records, of a Commonwealth or local agency that is not exempt under one of the 30 exceptions in Section 708 of Act 3 of 2008, is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree, or is protected by a privilege, such as attorney-client privilege.

2. Under the RTKL, some types of records are not available to the public. In this category are personal identifiers, medical information, personal notes, computer security information, draft minutes, notes from an executive session, employee records, criminal and non-criminal investigative records, driver records, attorney-client communications, confidential or proprietary information, trade secrets, or records that if disclosed could jeopardize public safety. This is a partial list of the exempted records, the Requester may review Section 708 of the RTKL which may be obtained from the Township.

### **V. PROCEDURE FOR REQUESTING PUBLIC RECORDS**

#### **A. Form and Nature of Requests**

1. All requests to inspect or duplicate public records of the Township shall be submitted to the ORO:

Assistant to the Township Manager/Open Records Officer\  
Upper Merion Township  
175 W. Valley Forge Road  
King of Prussia PA 19406

2. Requests may be submitted in person at the Township Administration Building, during normal business hours, Monday through Friday from 9 a.m. to 5 P.M.; by mail to Upper Merion Township, 175 W. Valley Forge Road, King of Prussia, PA 19406; by fax to 610-265-0482; or by e-mail to [acaramenico@umtownship.org](mailto:acaramenico@umtownship.org). All requests must be in writing on the Township's Right-to-Know Request Form (Appendix B). The Township will not require any person to disclose his or her reason for requesting access to a public record.
3. Requests must describe the records sought with sufficient specificity to enable the Township to ascertain which records are requested.

## **VI. PROCEDURE FOR REVIEWING REQUESTS FOR PUBLIC RECORDS**

### **A. Review of Record Requests**

1. Following the receipt of a request, the Township will make every effort to fulfill the request within five (5) business days of receipt by the ORO.
2. If the requests cannot be fulfilled in five (5) business days, the ORO will send written notice to the Requestor stating (a) the reason(s) why additional time is needed; (b) when the request is expected to be fulfilled; and (c) any fees that may be required.
3. If the Township receives a request for a public record that is not in the possession of the Township, the ORO will notify the Requestor in writing that they do not possess the record requested. When responding to a request, the Township shall not be required to create a record that does not currently exist or to compile, maintain, format or organize a record in a manner in which the Township does not currently compile, maintain, format or organize the record.
4. If the Township receives a request that contains in whole or in part a judicial record or a protected record of a third party (i.e. confidential record or trade secret), the ORO will, within five (5) business days, notify the third party that provided the information being requested. The third party will then have five (5) business days from receipt of the notice to provide input on the release of the record. The ORO will decide whether the information qualifies as confidential, proprietary or otherwise protected information within ten (10) calendar days after the third party has received the notice.
5. If the Township determines that a public record contains information that is subject to access as well as information that is not subject to access, the Township separate and exclude any records which are not public records or which are otherwise excluded or exempted from the definition of public record. If information that is not subject to access is an integral party of a public record and cannot be separated, the

Township shall redact from the public record the information that is not subject to access.

## **VII. OPERATING PROCEDURES FOR RESPONSES TO REQUESTS**

### **A. Action Required Within Five (5) Business Days f Receipt of Request**

1. Within five (5) business days of a receipt of a written request, the ORO shall:

(a) date stamp the request, record the request in a logbook ,compute the day that the five business day response period expires and make a notation of that date on the request;

(b) initiate a thorough search for the records requested and determine whether they are public records as provided under the RTKL; and

(c) prepare, review, sign, mail and log a written response.

### **B. Grant of a Request for Records**

1. If the ORO determines that some or all of the requested records are available, the written response shall outline the manner in which the Township is complying with the request.

2. The alternatives available to the Township ORO include:

(a) a response which includes a copy of the requested record. The Township may provide records on paper, electronically through email or by other means as digital media;

(b) a response notifying the Requestor that the records are available through publicly-accessible electronic means such as the Township's website or another agency's website;

(c) a response outlining information about how and when the Requestor can visit the Township to view and copy of the records. All documents deemed public records shall be available for inspection, retrieval and duplication during regular business hours except weekends and holidays. Any duplication shall occur at the Township building and no records may be removed from any Township office except by Township staff; and

- (d) a response indicating that the requested records are available upon payment of applicable fees. See the Fee Schedule attached hereto. Additionally, if the cost of complying with the request exceeds \$100.00, the Township ORO may collect these costs before delivery of the records.
3. The ORO, upon receiving a request for a record, as defined under the Act, shall:
- (a) Note the date of receipt of the written request.
  - (b) Determine the day on which five business days shall pass from receipt of the request.
  - (c) Maintain an electronic or paper copy of written requests, together with documentation submitted with the request.
  - (d) Create a file for retention of the request, the response, and other correspondence with the requestor.

**C. DENIAL OF A WRITTEN REQUEST**

1. If the ORO determines that a request for records should be denied, in whole or in part, the denial shall be issued in writing. The denial letter shall include:
- a. a description of the record requested.
  - b. the specific reasons for the denial, including a citation of supporting legal authority;
  - c. the signature and contact information for the ORO;
  - d. the date of the response; and
  - e. the procedure to appeal the denial.

**D. Extension of Time to Respond to Records Request**

1. The ORO may respond to the Requester by indicating that the Township will be taking additional time (not exceeding thirty(30) days) to respond, if such time is necessary because:
- a. the request for access requires redaction of a public record due to the existence of confidential, proprietary, or otherwise restricted or protected information;
  - b. The request for access requires retrieval of a record stored in a remote locations;

- c. The Requestor has not complied with the Township' policies regarding access to public records.
- d. The extent or nature of the request precludes a response within the required time period.

**VIII APPEAL PROCESS**

**A. Appeal of Township's Response**

- 1. The RTKL provides an appeal process through the PA Office of Open Records or the Office of the District Attorney of Montgomery County.
- 2. Except in the case of criminal investigative records, if a Requestor wishes to dispute the denial of a request, the Requestor must notify the PA Office of Open Records in writing of his/her desire to appeal the decision. The Requestor's appeal must state the grounds upon which the Requestor asserts that the record is a public record and must address any grounds stated by the Township for delaying or denying the request. The appeal shall be sent to the following address:

Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225

- 3. The appeal must be mailed within fifteen (15) business days of the mailing date indicated on the Township's response, or if no response is provided within fifteen (15) business days of the date, the request is deemed to be denied.
- 4. Unless the Requestor agrees otherwise to timing, the Appeals Officer will make a final determination within thirty (30) calendar days of the date the appeal is mailed. Prior to issuing its determination, the Appeals Officer may conduct a hearing. The Appeals Officer will provide a written explanation of the reason for the decision to the Requestor and the Township. In the event the Appeals Officer fails to issue a final determination within 30 calendar days, the appeal is deemed denied.
- 5. Within thirty (30) days of the mailing date of the final determination, a requester or the Township may file a petition to review in the Court of Common Pleas, Montgomery County, Norristown, PA.

IX **MISCELLANEOUS**

- A. **Disruptive Requests**: If a requester makes repeated requests for the same record and such requests are unreasonably burdensome, the agency may deny access to the record.
- B. **Disaster or Damage**: Requests may be denied if the records are unavailable due to disaster at the location of the records or where the documents are historical, ancient or rare and such access would cause irreparable harm. The contents of a record should be made available in some other form to the extent possible.
- C. **Voluntary Disclosure of Non-Public Records**: The Township may allow access to records that would otherwise be exempt if:
- a. Disclosure is not prohibited by federal or state law or regulation or court order;
  - b. The record is not privileged; and
  - c. The Township's management determines that public interest in disclosure outweighs other interests in favor of restriction of access.
  - d. Request for Information Provided by them Township by Third Party Involving Trade Secrets and Confidential Information.
1. If, in response to a request, the Township produces a record that is not a record as defined under the Act, the Township shall notify a third party if both of the following conditions are met:
    - (a) the third party provided the record to the Township; and
    - (b) the third party included a written statement signed by a representative of the third party stating that the record contains a trade secret or confidential proprietary information.
  2. Should the above conditions be met, the Township should first invoke a thirty (30) day extension and notify the requestor of the extension. The Township should then provide notice to the third party within five (5) business days from receipt of the request. The third party shall have five (5) business days from the date it received the notification to provide input on the release of the record. Within ten (10) days from the date of the notification, the Township shall either release the record or deny release of the record in accordance with the procedure for denials. Merely because a third party has stamped a record "confidential" or "trade

secret”, does not mean that the record meets the definition of such. Section 201 defines trade secret and confidential proprietary information as follows:

(a) **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 secret. The term trade secret includes data processing software obtained by the Township under a licensing agreement prohibiting disclosure.

(b) **Confidential Proprietary Information**: Commercial or financial information received by the Township.

(1) Which is privileged or confidential; and

(2) Disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

(c) The Township is not barred from releasing a document solely because a third party had provided input to the Agency recommending the denial of a record. As recommended by the Office of Open Records (OOR), the Township will work very closely with its solicitor before denying or releasing a record under this provision.

D. **Conversion to Paper**: If a record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication in paper or the fee for duplication in the original media as provided in the Act unless the requester specifically requests for the record to be duplicated in the more expensive medium.

E. **Enhanced Electronic Access**: If the Township offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by the Act, the Township 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 this Act. 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 fee 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 Township.

F. **Waiver of Fees**: The Township may waive the fees for duplication of a record, including, but not limited to, when:

1. the requester duplicates the record; or
2. the Township deems it is in the public interest to do so.

a. **Limitations**: Except as otherwise provide by statute, no other fees may be imposed unless the Township necessarily incurs costs for complying with the requester, and such fees must be reasonable. No fee may be imposed for the Township's review of record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this act.

G. Pursuant to Section 3101.1 of the Right to Know Law, if any provisions of the Right to Know Law regarding access to records conflict with any other federal or state law (like the Police Criminal History Act), the provisions of the Right to Know Law shall **not** apply.

H. **APPLICABILITY** - This policy and procedure shall apply to requests for information made after December 31, 2008.

I. **REGULATIONS AND POLICIES**

The Township may issue regulations and policies to implement requirements of the Act. Such regulations cannot limit the number of records that may be requested or made available and cannot require disclosure of the purpose or motive in requesting access.

J. **EXCEPTIONS**

1. **Burden of Proof**

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

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

3. The burden of proving that a financial record of a judicial agency is exempt from public access shall be on the judicial agency receiving a request by a preponderance of the evidence.

4. The **exemptions** from access by a requester under the Right-to-Know Act can be found in this policy and procedure as **Appendix D**.

K. **PENALTIES:**

1. Bad faith denial of access – up to \$1500.
2. Failure of the Township or public official to comply with court order – up to \$500 per day until records are provided.

L. **CERTIFICATION** - If the Township's response grants a request for access, the Township shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fee under the **Fee Schedule in Appendix C**. If requested, the certification is at the behest of the requester and for the purpose of legally verifying the public record.

M. **PROHIBITION** - A policy or regulation adopted under this Act by the Township may not include any of the following:

- a. A limitation on the number of records which may be requested or made available for inspection or duplication.
- b. A requirement to disclose the purpose or motive in requesting access to records.

N. **E-MAILS**

1. E-mail may be required to be produced under this Act.
  - a. E-mails are like any other recorded document and must be assessed for its content.
  - b. Exemptions:
    - (1) Records pertaining to internal pre-decisional deliberations of the Township, its members, employees or officials or pre-decisional deliberations between the Township members, employees or officials and members, employees or officials of another agency or municipality, including pre-decisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or documents used in the pre-decisional deliberations.
    - (2) Personal e-mail addresses.
    - (3) Draft bills, resolutions, regulations, directives or ordinances prepared by or for the Township.
    - (4) Notes and working papers prepared by or for a public officials or Township employee for personal use. Executive session materials are not public.

X. **REQUEST FOR POLICE RELATED RECORDS**

1. **Police Blotter:** Information is a police blotter as defined in 18 Pa.C.S. §9102 and utilized by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency is **not exempt** from a public request.

The “narrative” in the police blotter will fall under one of the following exemptions and will not be deemed public information under the Right-To-Know Law:

A record of an agency relating to or resulting in an criminal investigation, including:

- a. Complaints of potential criminal conduct other than a private criminal complaint.

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**RE: RIGHT TO KNOW POLICY**

**Date:**

- b. Investigative materials, notes, correspondence, videos and reports.
- c. 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.
- d. A record that includes information made confidential by law or court order.
- e. Victim information, including any information that would jeopardize the safety of the victim.
- f. A record that, if disclosed, would do any of the following
  - (1) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
  - (2) Deprive a person of the right to a fair trial or an impartial adjudication.
  - (3) Impair the ability to locate a defendant or co-defendant.
  - (4) Hinder the Township's ability to secure an arrest, prosecution or conviction.
  - (5) Endanger the life or physical safety of an individual.

2. **Vehicle Registration Information**: The Right-To-Know Law specifically protects "driver's license numbers", but says nothing specific about vehicle registration information. Additionally, names and addresses are considered public information under the new Right-to-Know Law.

3. **Building videos, cell blocks and audio recordings** - These are likely to fall under one of the exemptions. As per the Right-to-Know Law, §708(b)(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."

4. Pursuant to Section 3101.1 of the Right to Know Law, if any provisions of the Right to Know Law regarding access to records conflict with any other federal or state law (like the Police Criminal History Act), the provisions of the Right to Know Law shall not apply.

**A1-105.05**  
**RE: RIGHT TO KNOW POLICY**

**Date:**

**APPLICABILITY** – This policy and procedure shall apply to requests for information made after December 31, 2008.

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

TO BE REVIEWED:       As Necessary

DISTRIBUTION:         Township Manager, All Department Heads