

DERRY TOWNSHIP MUNICIPAL AUTHORITY
RIGHT TO KNOW POLICY FOR PUBLIC RECORDS

I. Introduction

The Derry Township Municipal Authority (“Authority”) is a body corporate and politic, duly organized in April 20, 1971 by the Board of Township Supervisors of the Township of Derry, Dauphin County, Pennsylvania, under the former Municipality Authorities Act of 1945, repealed by Act 2001, June 19, P.L. 287, No. 22, § 3, now known as the “Municipality Authorities Act,” Act 2001, June 19, P.L. 287, No. 22, § 4, 53 Pa. C.S.A. § 5601 et seq. As such, the Authority is a local agency for purposes of the Right To Know Law, under Act 3 of 2008 to be effective January 1, 2009.

All local agencies shall provide public records in accordance with the Right To Know Law. Therefore, any record in the possession of the Authority shall be presumed to be a public record, except in the following circumstances:

- (a) The record is exempt under the Right To Know Law;
- (b) The record is protected by the attorney-work product doctrine, the attorney-client privilege, or other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania; or
- (c) The record is exempt from disclosure under any other federal or state law or regulation, or judicial order or decree.

Records are broadly defined under the Right To Know Law. 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.

Requests for public records can be made by any person who is a legal resident of the United States, including resident aliens. Requests to the Authority can also be made by other local agencies, Commonwealth agencies (e.g., The Department of the Auditor General or the Treasury Department), judicial agencies (i.e., the courts), or legislative agencies (e.g., the Senate and House of Representatives).

The following information shall be posted at the Authority and, if the Authority maintains an Internet website, on the Authority's Internet website:

- (a) Contact information for the Open Records Officer.
- (b) Contact information for the Office of Open Records.
- (c) A form which may be used to file a request.
- (d) Regulations, policies and procedures of the agency relating to this act.

II. Access and Procedure

Requesters may make oral requests for access to records. 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. Verbal or written anonymous requests will not be accepted.

The Authority has designated Thomas J. Mealy to act as the Open Records Officer ("Officer"). The Officer's contact information is set forth below:

Open Records Officer
Derry Township Municipal Authority
670 Clearwater Road
Hershey, Pa 17033
Telephone: 717-566-3237 Ext. 302
Fax: 717-566-7934
E-mail: tmealy@DTMA.com

Questions regarding this policy may be directed to the Officer at the telephone or e-mail address listed above. In the absence of the Officer the Manager or Assistant Manager will assume the duties of the Open Records Officer.

All written requests must be addressed to the Officer, and all such requests must be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by Authority rules, any other electronic means. In the event that a written request for records is addressed to an Authority employee other than the Officer, the Authority employee is hereby directed to promptly forward such requests to the Officer.

Written requests should identify or describe the record sought with sufficient specificity to enable the Authority to ascertain which records are being requested and shall include the name and address to which the Authority should address its response.

Unless otherwise required by law, a written request need not include any explanation of the requester's reason for requesting the records or the intended use of such records. The Authority shall assign a tracking number to each filed form so as to track the Authority's progress in responding to requests under the new Right To Know Law.

Prior to granting a request for access in accordance with the Right To Know Law, the Authority may require a requester to prepay an estimate of the fees authorized by law if the fees required to fulfill the request are expected to exceed \$100.00. The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities. Except as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable.

A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. **In other words, the Authority shall not be required to create a record which does not currently exist or to otherwise compile, maintain, format or organize a record in a manner in which it does not currently compile, maintain, format or organize such record.**

Upon receipt of a written request for a public record, the Officer shall do the following:

- (a) Note the date of the receipt on the written request;
- (b) Compute the day on which the five-day period will expire, and make a notation of that date on the written request; and
- (c) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

III. Authority's Response

Upon receipt of a written request for access to a record, the Authority shall make a good faith effort to determine if the record requested is a public record and whether the Authority has possession, custody or control of the identified record. When doing so, the Authority will respond as promptly as possible under the circumstances existing at the

time of the request. **Under the Right To Know Law, the Authority must send a response within five (5) business days of receipt of the written request for access, or else the written request shall be deemed denied.** For purposes of this policy, a business day is any Monday, Tuesday, Wednesday, Thursday or Friday, except those days when the Authority's office is closed for all or part of a day due to an Authority observed holiday.

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

- (a) The request for access requires redaction of a record in accordance with the Right To Know Law;
- (b) The request for access requires the retrieval of a record stored in a remote location;
- (c) A timely response to the request for access cannot be accomplished due to bonified and specified staffing limitations;
- (d) A legal review is necessary to determine whether the record is a record subject to access under the Right To Know Law;
- (e) The requester has not complied with the Authority's policies regarding access to records;
- (f) The requester refuses to pay applicable fees authorized by the Right-to-Know Law; or
- (g) The extent or nature of the request precludes a response within the required time period of five (5) business days.

Upon a determination that one of the factors listed above applies, the 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. Information which the Authority redacts in accordance with the Right To Know Law shall be deemed a denial.

If the date that a response is expected to be provided is in excess of thirty (30) days, following the five (5) business days allowed for above, 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 Authority has not provided a response by that date.

If the Authority'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:

- (a) A description of the record requested.
- (b) The specific reasons for the denial.
- (c) 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.
- (d) Date of the response.
- (e) The procedure to appeal the denial of access.

IV. Appeal of Authority's Determination

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Appeals Officer for the Office of Open Records within fifteen (15) business days of the mailing date of the Authority's response or within fifteen (15) business day of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, and shall address any grounds stated by the Authority for delaying or denying the request. The Appeals Officer shall make a final determination which shall be mailed to the requester and the Authority within thirty (30) days of receipt of the appeal.

A requester or the Authority may file a petition for judicial review as required by the Court of Common Pleas within thirty (30) days of the mailing date of the final determination by the Appeals Officer.

The Office of Open Records has established an internet website with information relating to the Right To Know Law, including information on fees, advisory opinions and decisions. For information on the Office of Open Records, please go to openrecords.state.pa.us.

V. Fee Structure

The Derry Township Municipal Authority has established the following fee structure in accordance with the law.

Record Type	Fee
<u>Postage Fees</u>	<u>Actual Cost</u>
Copies: A “photocopy” is either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5” x 11” page.	\$ 0.10 per page
Certification of a Record	\$1.00 per record, not per page
Wide Format Copies	\$1.48 per square foot
Specialized documents: Examples include, but not limited to drawings, color copies, non-standard sized documents	Actual Cost
Facsimile	\$0.65 per page plus long distance cost if any
Microfiche/Other Media	Actual Cost
Redaction Fee	No redaction fee may be imposed
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 on paper or the fee for duplication in the original media unless the requester specifically requests for the record to be duplicated in the more expensive medium