

BIRDSBORO MUNICIPAL AUTHORITY

RIGHT-TO-KNOW POLICY FOR PUBLIC RECORDS

I. Introduction

The Birdsboro Municipal Authority (“Authority”) is a body corporate and politic, duly organized by the Council of the Borough of Birdsboro, Pennsylvania (the “Borough”), under the former Municipality Authorities Act of 1945, repealed by Act 2001, June 19, P.L.287, No. 22, §3, now known as the “Municipality Authorities Act,” Act 2001, June 19, P.L.287, No. 22, § 4, 53 Pa.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 recent amendments to the Commonwealth of Pennsylvania’s Right-to-Know Law, 65P.S. § 66.1 et al.

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 Section 708 of 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 the laws of the Commonwealth of Pennsylvania (i.e., statute or case law); 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 or 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).

II. Access and Procedure

Requesters must make requests for access to records in writing. A written request for access to records may be submitted in person, by mail, by e-mail, or by facsimile.

The Authority has designated Karen Willman, Borough Manager, to act as the Open-Records Officer (“Officer”). The Officer’s contact information is set forth below:

Karen Willman
Borough of Birdsboro
Borough Manager
202 E. Main Street
Birdsboro, PA 19508
Phone: (610) 582-3060
Fax: (610) 582-6039
Mobile: (484) 256-0501
Email: kwillman@birdsboro.berks.co.org

Questions regarding this policy may be directed to the Officer at the telephone or e-mail address listed above.

All written requests must be addressed to the Officer. In the event that a written request for records is addressed to an Authority representative other than the Officer, the Authority representative 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. 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 form which shall be used to file a request is attached hereto as Exhibit “A”. 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 payable in a record request shall be as follows:

Fees

If a written request for records is granted in whole or in part, the following fees will be charged to the requester:

<u>Record Type</u>	<u>Fee</u>
Copies	\$0.25 per page
Certified Record Surcharge	\$1.00 per record
Redaction	No Charge
Other costs	Actual cost
Postage:	
Records fitting into standard letter envelope	No charge
Other types of mailing	Actual cost

A “photocopy” is either a single-sided copy or one side of a double-sided copy of a standard 8.5” x 11” page. As noted above, the Authority may require a requester to prepay an estimate of the fees listed above if the fees required to fulfill the request are expected to exceed \$100, including prepayment of delinquent fees from a prior request. All costs must be paid by check or money order payable to the “Birdsboro Municipal Authority.”

Except as otherwise provided by statute, no other fees may be imposed unless the Authority necessarily incurs costs for complying with the request, and such fees must be reasonable.

In all circumstances, the requester must agree to pay applicable fees authorized by the new Right-to-Know Law, such as (but not limited to) postage (not to exceed actual cost of mailing), duplication and certification. **All applicable fees shall be paid before a requester receives access to the record(s) requested.**

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. **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.** The Authority 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.

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 (see discussion of response, below) 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 Borough’s office is closed for all or part of a day due to a 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 can not be accomplished due to bonafide 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) calendar 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.

For purposes of this policy, the "mailing date" shall be the date affixed to a: (1) response from the Officer to a request, which is to be the date the response is deposited in the U.S. mail; (2) final determination from the Officer, which is to be the date the final determination is deposited in the U.S. mail.

Notwithstanding anything contained in this Policy to the contrary, the Authority may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Authority.

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 Commonwealth of Pennsylvania's 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 Office of Open Records has established a internet website with information relating to the Right-to-Know Law, including information on fees, advisory opinions and decisions, plus the name and address of all Open-Records Officers in the Commonwealth of Pennsylvania. For information on the Office of Open Records, requesters are referred to openrecords.state.pa.us.

V. Retention of Records

Nothing in the Right-to-Know Law shall be construed to modify, rescind or supersede the Municipal Records Act, 53Pa.C.S.A. § 1381 et seq., or the Authority's lawfully adopted record retention and disposition policy. Moreover, nothing in the Right-to-Know Law shall be construed to require access to any computer of the Authority, or that of an individual or employee of the Authority.