

OPEN RECORDS AND RIGHT TO KNOW

For information relating to requests for records pursuant to the Right to Know Law, please refer to the Pike County Right to Know Resolution #09-05. Request form is available in PDF below.

For all record requests, please submit the completed request form to:

Gary R. Orben
Open Records Officer
506 Broad Street
Milford, PA 18337
gorben@pikepa.org
Phone (570) 296-7613
Fax (570) 296-6055

PIKE COUNTY COMMISSIONERS

PIKE COUNTY ADMINISTRATION BUILDING
506 BROAD STREET
MILFORD, PA 18337
570-296-7613
FAX: 570-296-6055

RICHARD A. CARIDI
HARRY FORBES
KARL A. WAGNER JR.

} COMMISSIONERS



GARY R. ORBEN
CHIEF CLERK

THOMAS F. FARLEY, ESQUIRE
COUNTY SOLICITOR

**BOARD OF COMMISSIONERS OF PIKE COUNTY
PIKE COUNTY, PENNSYLVANIA
RESOLUTION NO. 09-05**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF PIKE COUNTY
("COMMISSIONERS") ESTABLISHING A POLICY REGARDING REQUESTS
FOR PUBLIC RECORDS PURSUANT TO THE RIGHT-TO-KNOW LAW; AND
CONTAINING CLAUSES FOR SEVERABILTY, REPEAL AND EFFECTIVE DATE.**

WHEREAS, On February 14, 2008, Governor Rendell signed into law the Open Records Act, Right to Know Law (Act 3 of 2008) replacing Pennsylvania's 1957 Right to Know (RTK) law. Most provisions of the law will take effect January 1, 2009. The exceptions to that effective date are the establishment of the State Open Records Office which took effect July 1, 2008 and the presumption that records are public which took effect immediately.

WHEREAS, the Commissioners desire to adopt a policy implementing the Right-to-Know Law.

NOW, THEREFORE, BE IT ADOPTED AND RESOLVED, by the Board of Commissioners of Pike County, ant it is hereby **RESOLVED** as follows:

SECTION 1. Definitions. The following terms when used in this Resolution shall have the meanings set forth in this section unless the context clearly indicates otherwise:

"Commissioners" shall mean the Board of Commissioners of Pike County.

"Chief Clerk" shall mean the Chief Clerk of Pike County.

"Board" shall mean the members of the Board of County Commissioners, acting together in a public meeting duly assembled.

"Business day" shall mean any day other than a Saturday, Sunday, holiday or other day when the Commissioners' office employees are not required to work for the Commissioners.

"Person" shall mean an individual and any other legal entity determined by final order of a court having jurisdiction of the Commissioners to be a person under the Right-to-Know Law.

"Public record" is a record, including a financial record, of a Commonwealth or local agency that:
(1) is not exempt under section 708 of the Right to Know Law (Act 3 of 2008);

- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- (3) is not protected by a privilege.

“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” shall mean a person who is a legal resident of the United States or may be another agency and requests a record pursuant to the Right-to-Know and this Resolution.

“Response” shall mean access to a record or the Commissioners’ written notice granting, denying or partially granting and partially denying access to a record.

“Right-to-Know Law” shall mean the Act of June 21, 1957, P.L. 390, No. 9, as amended from time to time.

“Open Records Officer” shall mean the Chief Clerk of Pike County.

SECTION 2. Procedure for Access to Public Records of the Board.

(a) General Rule. Unless otherwise provided by law, a public record of the Commissioners shall be accessible for inspection and duplication by a requester in accordance with this Resolution. A public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for access during the regular business hours of the County. Nothing in this Resolution shall provide for access to a record which is not a public record.

(b) Requests. The Commissioners may fulfill verbal requests for access to records and anonymous requests for access to records. In the event that the requester wishes to pursue the relief and remedies provided for in the Right-to-Know Law, the requester must initiate such relief with a written request.

(c) Written Requests. A written request for access to records may be received in person, by mail, facsimile transmissions or electronic transmission (e-mail) provided that such transmission is in printable format. A written request shall be addressed to the Pike County Commissioners, Administration Building, 506 Broad Street, Milford, PA 18337. The facsimile number is (570) 296-6055. E-mail address is gorben@pikepa.org. Each written request should identify or describe the records sought with sufficient specificity to enable the Commissioners to ascertain which records are being requested and shall include the name and address to which to Commissioners 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.

(d) Creation of a Public Record. When responding to a request for access, the Commissioners 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 it does not currently compile, maintain, format or organize the public record.

(e) Conversion of an Electronic Record to Paper. If a public record is only maintained electronically or in other nonpaper media, the Commissioners shall, upon request, duplicate the public record on paper when responding to a request for access in accordance with this Resolution.

SECTION 3. Access to Public Records. The Commissioners may not deny a requester access to a public record due to the intended use of the public record by the requester.

SECTION 4. Redaction. If the Commissioners determine that a public record contains information which is subject to access as well as information which is not subject to access, the Commissioners' 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 and cannot be separated, the Commissioners shall redact from the public record the information which is subject to access, and the response shall grant access to information which is subject to access. The Commissioners may not deny access to the public record if the information which is not subject to access is able to be redacted. Information which the Commissioners redact in accordance with this subsection shall be deemed a denial under section 5 of this Resolution.

SECTION 5. The Commissioners' Response to Written or Verbal Requests for Access.

(a) General Rule. Upon receipt of a written or verbal request for access to a record, the Commissioners shall make a good faith effort to determine if the record requested is a public record and to respond as promptly as possible under the circumstances existing at the time of the request, but shall not exceed five (5) business days from the date the written or verbal request is received by the Chief Clerk. If the Commissioners fail to send the response within five (5) business days of receipt of the written request for access, the written request for access shall be deemed denied.

(b) Exception. Upon receipt of a written request for access, if the Commissioners determined that one of the following applies:

- (1) the request for access requires redaction of a public record in accordance with section 4;
- (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 accompanied due to bona fide and specified staffing limitations;
- (4) a legal review is necessary to determine whether the record is a public record subject to access under the Right-to-Know Law and this Resolution;
- (5) the requester has not complied with the Commissioners' policies regarding access to public records; or
- (6) the requester refuses to pay applicable fees;

then the Commissioners shall send written notice to the requester within five (5) business days of its receipt of the request notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided. 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 in subsection (a), the requester must agree to the extension of time. If there is no agreement the request shall be deemed denied. If the agency has not responded within the time extension the request shall be deemed denied the following day.

Additionally an agency may respond to a request by notifying the requester that the record is available through electronic means. If the requester is unable or unwilling to access the record electronically, the requester may within 30 days of agency notification submit a written request to have the record converted to paper. The agency has five days to provide the record in paper format.

(c) Denial. If the Commissioners' response is a denial of a written request for access, whether in whole or in part, a written response shall be issued and include:

- (1) A description of the record requested.
- (2) The specific reason(s) for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is not a public record, the specific reasons for the Commissioners' determination that the record is not a public record shall be included.
- (3) The typed or printed name, title, business address, business telephone number and signature of the Chief Clerk, the public official or public employee on authority the denial is issued.
- (4) Date of the response.
- (5) The procedure to appeal the denial of access under this act.

(d) Certified Copies. If Commissioners' response grants a request for access, it shall, upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees pursuant to section 8.

SECTION 6. Final Determination.

(a) Authorization.

- (1) 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 judicial, legislative or other appeals officer designed under section 503(d) of the Right To Know Law (Act 3 of 2008) within 15 business days of the mailing date of the agency's response or within 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, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

- (2) Except as provided in section 503(d) of the Right To Know Law (Act 3 of 2008), in the case of an appeal of a decision by a Commonwealth agency or local agency, the Office of Open Records shall assign an appeals officer to review the denial.

(b) Determination.

- (1) Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).
- (2) If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.
- (3) 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 agency.

(c) Direct Interest.

- (1) A person other than the agency or requester with a direct interest in the record subject to an appeal under this section may, within 15 days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, 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.
- (2) The appeals officer may grant a request under paragraph (1) 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.
- (3) Copies of the written request shall be sent to the agency and the requester.

SECTION 7. Fees.

(a) Postage. The Commissioners hereby impose a fee for postage equal to the actual prevailing cost of mailing.

(b) Duplicating. The Commissioners hereby impose fees at rates to be determined for duplication of public records by photocopying, (printing from electronic media or microfilm, copying into electronic media), and transmission by facsimile (or other electronic means)(and other means of duplication) which fees do not exceed the prevailing fee for comparable duplication services provided by local business entities in the Pike County area.

(c) Certification. The Commissioners may impose a fee of \$5.00 per request 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.

(d) Conversion of Paper. If a public record is only maintained electronically or in other non-paper media the Commissioners may impose fees which shall be limited to the fee for duplication (actual cost) in the native media as provided by subsection (b) unless the requester specifically requests for the public record to be duplicated in the more expensive medium.

(e) Waiver of Fees. The Commissioners may waive the fees for duplication of a public record, including, but not limited to, when the Commissioners deem it is in the public interest to do so.

(f) Other Fees/Limitations. Except as otherwise provided by statute, no other fees may be imposed. A reasonable fee equal to the actual cost shall be imposed if the Commissioners, out of necessity, incur costs not otherwise described in this Resolution for complying with the request. However, the Commissioners recognize it may not impose a fee for its review of a record to determine whether the record is a public record subject to access.

(g) Prepayment. Prior to granting a request for access in accordance with the Right-to-Know Law and this Resolution, a requester shall prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100.

SECTION 8. Confidentiality. If the Commissioners receive a request for a record that is subject to a confidentiality agreement executed before December 26, 2002, the effective date of Act 2002-100, the law in effect at the time the agreement was executed, including judicial interpretation of the law, shall govern access to the record, even if the record is a public record, unless all parties to the confidentiality agreement agree in writing to be governed by the Right-to-Know Law, as amended by Act 2002-100.

SECTION 9. Posting. A copy of this Resolution shall be conspicuously posted at the Commissioners' offices.

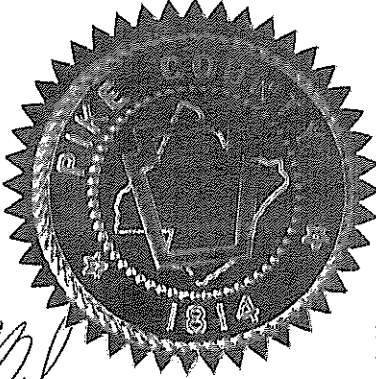
SECTION 10. Headings. The headings of sections and parts thereof are for convenience only and shall not affect the construction hereof.

SECTION 11. Severability. Should any section, paragraph or provision in this Resolution be declared by a court of competent jurisdiction to be invalid, such judgment shall not affect the validity of this Resolution as a whole or any part or provision thereof, other than the part so declared to be invalid or unconstitutional.

SECTION 12. Repealer. This Resolution shall supersede and repeal all resolutions and parts thereof inconsistent or conflicting herewith.

SECTION 13. Effective Date. This Resolution shall become effective upon adoption.

DULY RESOLVED, this 27th day of JANUARY, 2009, by the Board of Commissioners of Pike County, Pennsylvania, in lawful session duly assembled.



BOARD OF COMMISSIONERS OF PIKE COUNTY

Richard A. Caridi

Richard A. Caridi, Chairman

ATTEST:

Harry Forbes

Harry Forbes, Vice-Chairman

Gary R. Orben
Gary R. Orben, Chief Clerk

Karl A. Wagner Jr.
Karl A. Wagner Jr., Commissioner

1-27-09
date

**Right to Know Policy and Procedure
Public Access to Information
Appendix A**

RIGHT-TO-KNOW REQUEST FORM

DATE OF REQUEST: _____

REQUEST SUBMITTED BY: _____E-MAIL _____U.S. MAIL _____FAX _____IN-PERSON

NAME OF REQUESTOR: _____

STREET ADDRESS: _____

CITY/STATE/ZIP CODE: _____

TELEPHONE (Optional): _____

RECORDS REQUESTED:

**Provide as much specific detail as possible so the agency can identify the information.*

DO YOU WANT COPIES? _____YES or _____NO

DO YOU WANT TO INSPECT THE RECORDS? _____YES or _____NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? _____YES or _____NO

RIGHT TO KNOW OFFICER:

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5)-DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*