

Resolution No. 2020-09

BOROUGH OF ELIZABETHTOWN LANCASTER COUNTY, PENNSYLVANIA

A RESOLUTION OF THE BOROUGH OF ELIZABETHTOWN UPDATING ITS RIGHT-TO-KNOW LAW POLICY.

WHEREAS, Elizabethtown Borough adopts this policy pursuant to Section 504(a) of the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 ("RTKL"); and

WHEREAS, the Office of Open Records ("OOR") provides guidance to agencies in developing their own policies to provide information relating to the implementation and enforcement of the RTKL; and

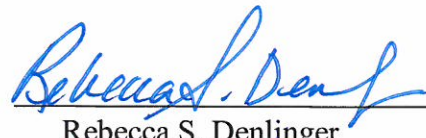
WHEREAS, at the Reorganization Meeting held on January 6, 2020 Rebecca S. Denlinger was appointed to Open Records Officer effective January 23, 2020 and Chief Ed Cunningham was appointed to Assistant Open Records Officer.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED by the Borough Council of the Borough of Elizabethtown, Lancaster County, that the attached Right-to-Know Law (RTKL) Policy is effective immediately.

DULY ADOPTED this 19th day of November, 2020, by the Borough of Elizabethtown in lawful session duly assembled.

ELIZABETHTOWN BOROUGH

ATTEST:



Rebecca S. Denlinger
Borough Secretary

BY:



Borough Council (Vice) President

[BOROUGH SEAL]

**Elizabethtown Borough
Right-to-Know Law Policy**

**Adopted December 18, 2008 pursuant to 65 P.S. § 67.504(a)
Amended pursuant to Resolution No. 2018-15
Amended pursuant to Resolution No. 2020-0X
Effective Date: November 19, 2020.**

I. Authority

Elizabethtown Borough ("Agency") adopts this policy pursuant to Section 504(a) of the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 ("RTKL"). The Agency has made this policy available to the public at its administrative office(s) and on its public website along with a RTKL Request Form.

II. Definitions

All of the definitions set forth in the RTKL are incorporated into this policy by reference. See 65 P.S. § 67.102.

AORO. The Agency Open Records Officer designated by the Agency pursuant to Section IV of this policy.

Business day. The regular business hours of the Agency are Monday through Friday from 7:30 am to 4:00 pm. Business days exclude Saturday and Sunday and a weekday on which the Agency is closed for business.

III. Agency Website

The Agency maintains a public website at www.ETownOnline.com. Many of the records most commonly requested from the Agency are available on the website. The following information is also posted on the Agency's website: AORO contact information; contact information for the OOR; a form which may be used to file a RTKL request; and a copy of this policy. See 65 P.S. § 67.504(b).

IV. Submitting a RTKL Request to the Agency

A. *Open Records Officer*. The Agency has designated an AORO and Alternate AORO's to respond to RTKL requests.

The contact information for the AORO and Alternate AORO's is:

- | | |
|-----------------------------------|----------------------|
| • AORO (Administration) | Rebecca S. Denlinger |
| • Alternate AORO (Administration) | Ann Roda |
| • AORO (Police) | Ed Cunningham |
| • Alternate AORO (Police) | Shane Deardorff |

By Mail or In Person:
Elizabethtown Borough
600 S. Hanover Street
Elizabethtown, PA 17022

Phone: 717-367-1700

Fax: 717-367-6800

Email: boro@etownonline.com

The contact information for the AORO and Alternate AORO is posted on the Agency website.

- B. *Request.* Requests must be submitted in writing using the Agency RTK Request Form available on the Agency website and must be addressed to the AORO. If a requester chooses not to use the Agency RTK Request Form or the Standard Request Form established by the Office of Open Records the request will be considered an informal request, not subject to the RTKL. This means that the requester cannot pursue the relief and remedies provided for in the RTKL. To allow the Agency to locate requested records and determine whether those records are public, requests for records should be specific and concise and clearly identify, as precisely as possible, the records sought. See 65 P.S. § 67.703. Requesters should clearly indicate the preferred method of access - paper copies, electronic copies or by inspection. A requester should retain a copy of the request, as a copy of the request is necessary should a requester appeal the Agency response.
- C. *Receipt of the request.* For the purpose of calculating the response deadline, the Agency is deemed to have received the request on the business day that the AORO receives the request. See 65 P.S. § 67.901. Any request that is received by the Agency's AORO after the close of regular business hours shall be deemed to be received on the next business day. If the request is received by an Agency employee other than the AORO, the request will be forwarded to the AORO as soon as practical and will be deemed to be received on the business day on which it is received by the AORO.
- D. *Verbal requests.* The Agency will respond to verbal requests for records at its discretion. Requesters submitting verbal requests for records should be aware that they may not pursue the remedies available to a requester under the RTKL.
- E. *Anonymous requests.* The Agency will not respond to anonymous requests for records.
- F. *Response period generally.* The Agency has 5 business days to respond to a request for records under the RTKL. If an Agency does not respond, the request is considered "deemed denied," and a requester's appeal rights commence.

V. Agency Response

- A. *Extension of time for response.* The Agency is permitted to take an additional 30 calendar days to respond to any request for the reasons set forth in Section 902 of the RTKL. See 65 P.S. § 67.902. If the Agency invokes an extension, the Agency will inform the requester in writing, in accordance with the requirements set forth in Section 902(b)(2) of the RTKL.
- B. *Requester's agreement to extend the response period.* The requester may agree, in writing, to extend the Agency response period. See 65 P.S. § 67.902(b)(2). The requester must agree to the extension during the initial 5 business-day response period or the extended 30 calendar day response period, if the Agency has invoked one.
- C. *Trade secrets.* If a request involves records provided to the Agency by a third party and the third party previously provided the Agency with a written statement that the record contains a trade secret or confidential proprietary information, the Agency shall provide notice to the third party. See 65 P.S. § 67.707(b).
- D. *Final response.* The Agency may grant a request, partially grant and partially deny a request, or deny a request in its entirety. The final response of the Agency will be in writing. Should the Agency fail to issue a response within the applicable response period, the request is deemed denied. See 65 P.S. § 67.901.
 - 1. *Granting access to records.* The Agency may grant a request for records by issuing a response: (1) granting access to inspect Agency records during the Agency's regular business hours; (2) sending copies of the records to the requester; or (3) by notifying the requester that the records are available on the Agency website or other publicly accessible electronic means. See 65 P.S. §§ 67.701(a), 704.
 - 2. *Denying or partially denying access to records.* Should the Agency deny or partially deny a request for records through redaction or otherwise, the Agency will inform the requester of the denial or partial denial in writing. The response will describe the requested records, inform the requester that the Agency does not possess the responsive records or, if the records are exempt from public access, provide a citation to the relevant legal basis for withholding the requested records. See 65 P.S. § 67.903. Additionally, the response will provide the name, signature, title, business address and telephone number of the Open Records Officer who denied the request, as well as the date of the response and the procedure to appeal the denial. See 65 P.S. § 67.903.
- E. *Disruptive requests.* The Agency 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 Agency.

F. *Disaster or Potential Damage.* The Agency may deny a requester access to records when:

1. timely access is not possible due to fire, flood or other disaster; or
2. historical, ancient or rare documents, records, archives and manuscripts when accessed may, in the professional judgment of the curator or Open Records Officer, cause physical damage or irreparable harm to the record. However, to the extent possible, the contents of a record under this section shall be made accessible to a requester even when the record is physically unavailable.

G. *Agency Discretion.* The Agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying, if disclosure of the record is not prohibited by law, regulation or court order, the record is not protected by a privilege, and the Open Records Officer determines that the public interest favors access.

H. *Fees.* The Agency will charge fees consistent with Elizabethtown Borough's Fee Schedule adopted via Resolution and the RTKL Fee Structure, available at <http://www.openrecords.pa.gov/RTKL/FeeStructure.cfm>.

VI. RTKL Appeals

A. *Generally.* To challenge the denial, partial denial, or deemed denial of a request for Agency records, an appeal may be filed using the OOR appeal form, available at <http://www.openrecords.pa.gov/Appeals/AppealForm.cfm> or by contacting the OOR at the following address:

Office of Open Records
Commonwealth of Pennsylvania
333 Market St., 16th Floor
Harrisburg PA, 17101-2234
openrecords@pa.gov

Criminal investigative records. To challenge the denial of a request or portion of a request on the basis that records were withheld because they are related to criminal investigative records, an appeal should be filed by contacting:

Amara Riley
Chapter 11 RTKL Appeals Officer
Lancaster County District Attorney's Office
50 North Duke Street
P.O. Box 83480
Lancaster PA, 17608-3480

- B. *Requirements of an appeal.* All appeals must be filed within 15 business days of the mailing date of the Agency's denial, partial denial, or deemed denial of the request. All appeals must be in writing; must state the grounds upon which the requester asserts that the requested records are public records; must address any grounds stated by the Agency for denying the request; and must include a copy of the request and the Agency's response, if any. See 65 P.S. § 67.1101(a)(1).

VII. Agency Notification of Third Parties on Appeal

Agency must notify third parties. If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, the Agency must notify such parties of the appeal immediately and provide proof of that notice to the OOR within 7 business days from the date of the OOR's Official Notice of Appeal. Such notice must be made by (1) providing a copy of all documents included with the appeal to the OOR; and (2) advising that interested persons may request to participate in the appeal. See 65 P.S. § 67.1101(c).

VIII. Mediation

The RTKL requires the OOR to establish an informal mediation process to resolve disputes under the RTKL. 65 P.S. § 67.1310(a)(6). This is a voluntary process to help parties reach a mutually agreeable settlement on records disputes before the OOR. Mediation, a facilitated conversation between the parties that can serve as a fair and efficient tool to resolve conflict, can save time and expense. When appropriate, the Agency is open to resolving RTKL disputes through the OOR's mediation process.

IX. Record Retention

The Agency's record retention policy is in accordance with the Municipal Records Manual by the Pennsylvania Historical and Museum Commission (PHMC) Bureau of Archives and History as amended March 28, 2019.

Notwithstanding any other existing record retention policy, once a RTKL request is received, the Agency shall maintain, preserve, retain, protect, and not destroy any and all records, both electronic and hard copy, that are potentially responsive to the request until such time as the request is fulfilled and all associated appeals are resolved.

X. Additional Information about the RTKL

Additional information about the RTKL, the request process, and the appeal process is available on the OOR website at <https://www.openrecords.pa.gov>.