

ORDINANCE NO. 14679

FILE OF CITY COUNCIL

BILL NO. 130 - 2008

DECEMBER 17, 2008

AN ORDINANCE

Repealing Article 112 (Public Records) of the Administrative Code of the City of Allentown and adopting an Open Records Policy for the City of Allentown consistent with Act 3 of 2008 of the Pennsylvania General Assembly, known as the "Right-to-Know Law"

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

Section 1: Article 112 (Public Records) of the Administrative Code of the City of Allentown is hereby repealed and is replaced, in its entirety, by the following:

ARTICLE 112 PUBLIC RECORDS

112.01 Purpose

112.02 Regulations

112.03 Definition of Public Record

112.04 Procedures

112.05 Appeal Rights

112.06 Judicial Review

112.07 Fees

112.01 Purpose

The purpose of this policy is to assure compliance with the Pennsylvania Right-to-Know Law (the "Law"), Act 3 of 2008, 65 P.S. Section 67.101 et. seq. which fully takes effect on January 1, 2009, to provide access to public records of the City of Allentown (the "City"), to preserve the integrity of the City's records and to minimize the financial impact upon the residents of the City regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

112.02 Regulations

A. The City designated the City Solicitor's Office as the Open Records Officer under Law.

B. All requests for records shall be in writing on the City's Public Record Review/Duplication Request Form, which is part of this Ordinance. No verbal or anonymous verbal or written requests for records will be honored. Written requests may be submitted to the Solicitor's Office in person, by mail, by facsimile or by email.

C. The written request must describe the record(s) sought with specificity to enable the City to identify and locate the record requested.

D. The City may make records available on its website. If the person requesting the record is unable or unwilling to access the website, the person may, within 30 days notice by the City that the record requested is posted on the website, request, in writing, to have the City convert the record to paper. The City will provide the paper record to the person so requesting within 5 days of the request.

E. Requests need not include an explanation of the reason for the request for records or the intended use of the information unless otherwise provided by law.

F. The City is not required to create a record which does not currently exist. The City is not required to maintain, compile, format or organize a record in a way in which it currently does not do so.

G. Records shall be accessible for inspection and copying in the medium requested, if available. If not, the record will be provided in the medium in which it exists.

H. Records will be made available for inspection in the office of the City Department in charge of keeping the record(s) requested during regular business hours from 8:00 am to 4:30 pm. The presence of a City employee is required at all such times as public records are being inspected and examined.

I. No access to a City or individual employee computer will be permitted.

J. The City may deny access to a record if the person making the request has made repeated requests for the same record and such repeated requests have placed an unreasonable burden on the City.

K. A record not in the possession of the City but which is in the possession of a party with whom the City has contracted to perform a government function on behalf of the City and which directly relates to the government function and is not exempt under the Law shall be considered a public record subject to disclosure under the Law.

L. Trade Secrets. Any person who provides documents to the City may designate, in writing, that the document contains a trade secret or confidential and proprietary information. If a request is made for a record which contains such a designation, the third party who submitted the record containing a trade secret or confidential and proprietary information to the City and made the designation will be notified and will have input on whether or not the record containing such information will be released. (Example: Information submitted in response to competitive bidding requirements).

M. If the City's response to a request for records states the requested records are available for delivery (i.e. pick up) at the Solicitor's Office and the person who requested the records fails to retrieve the records within 60 days of the City's response, the City may dispose of any copies which have not been retrieved and may retain any fees paid to date.

N. If the City's response grants a request for access, the City shall, upon request, provide a certified copy of the record if the person who requested the record pays the applicable fee for certification.

122.03 Definition of Public Record

A record in the possession of the City is presumed to be a public record subject to disclosure unless:

A. The record is exempted from disclosure under any one or any combination of the thirty (30) exemptions under the Law;

B. The record is protected by privilege;

C. The record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree;

D. The City's Open Records Officer (the Solicitor's Office) determines the public interest favoring access outweighs any individual, agency or public interest that may favor restriction on access. If the City produces a record which is not a public record by definition under this subsection, the City will notify the third party who supplied the record to the City.

112.04 Procedure

A. General Rule. Upon receipt of a written request for access to a record, the City shall make a good faith effort to determine if the record requested is a public record and whether the City has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in advance in order to receive access to the record requested. The time for the City's response shall not exceed 5 business days from the date the written request is received by the Solicitor's Office of the City. If the City fails to send a response within 5 business days of the receipt of the written request for access, the written request for access shall be deemed denied.

B. Extension of Time.

1. Upon receipt of a written request for access, the City Solicitor's Office shall determine whether one of the following applies:

a. The request requires redaction (i.e. non-public information blocked or blacked out) of a record as provided in Section 3, below;

b. The request requires the retrieval of a record stored in a remote location;

c. Timely response to the request cannot be accomplished due to bona fide and specified staffing limitations;

d. A legal review is necessary to determine whether the record is a record subject to access under the Law;

e. The person requesting the record has not complied with the City's policies regarding access to records;

f. The person requesting the record refuses to pay applicable fees authorized by the Law and this Ordinance;

g. The extent or nature of the request precludes a response within the required time period.

2. Upon a determination that one of the factors listed in subsection 1, above, applies, the Solicitor's Office shall send written notice to the person making the request within 5 business days of receipt of the request for access which will include a statement notifying the person making the request that the request is being reviewed, the reason for the review, a reasonable date the response is expected to be provided and an estimate of the applicable fees owed when the record becomes available. If the date a response is expected to be provided is in excess of 30 days, following the 5 business days allowed for a response, the request for access shall be deemed denied, unless the person making the request agrees, in writing, to an extension to the date specified in the City's notice of review. If the person requesting the record agrees to an extension, the request shall be deemed denied on the day following the date specified in the notice if the City has not provided its response by that date.

3. Redaction.

If the City determines that a public record contains information which is subject to disclosure as well as information which is not subject to disclosure, the City's response shall grant access to the information which is subject to disclosure and deny access to the information which is not subject to disclosure. The City will not deny access to the record if the information which is not subject to disclosure is able to be redacted (i.e. non-public information blocked or blacked out). Information which the City redacts in accordance with this subsection shall be deemed a denial of the request for the record

C. Denial.

If the City's response is a denial of a written request for access, whether in whole or in part, the City will issue a written denial which shall include:

1. A description of the record requested;
2. The specific reasons for the denial, including a citation of supporting legal authority;
3. The typed name, title, business address, business phone number and signature of the Assistant City Solicitor on whose authority the denial is issued;
4. Date of response;
5. The procedure to appeal the denial under the Law.

112.05 Appeal Rights

A. If a written request for access to a record is denied or deemed denied, the person making the request may file an appeal to Terry Mutchler, Esquire, Executive Director, Office of Open records, Commonwealth Keystone Building, 400 North Street, Plaza Level, Harrisburg, Pennsylvania 17120-0225 within 15 days of the mailing date of the City's response or within business 15 days of a deemed denial. The appeal shall state the grounds upon which the person making the request asserts that the record is a public record and shall address any grounds stated by the City for denying the request. The Appeals Officer designated by the Executive Director of the state Office of Open Records, who is authorized to hold a hearing, if he or she deems appropriate, shall issue a final determination on behalf of the Office of Open Records on the City's action.

B. The District Attorney for Lehigh County, James B. Martin, Esquire, Lehigh County Courthouse, 455 West Hamilton Street, Allentown, Pennsylvania 18101-1614, shall designate one or more appeals officers to hear appeals relating to access to criminal investigative records in possession of the City. The designated appeals officer shall determine if the record requested is a criminal investigative record.

112.06 Judicial Review

A. Within 30 days of the mailing date of the final determination of the state Appeals Officer relating to the City's decision or of the date a request for access is deemed denied, the person making the request or the City may file a petition for review with the Court of Common Pleas of Lehigh County. The decision of the Court will contain findings of fact and conclusions of law based upon the evidence as a whole. The Court shall clearly and concisely explain the rationale for its decision.

B. The filing of a petition for review shall stay the release of records until a decision by the Court is issued.

C. The City, the person making the request for records and the state Office of Open Records shall be given notice of the filing of a petition for review with the Court of Common Pleas of Lehigh County and each shall have an opportunity to respond in accordance with the Rules of Court.

D. The record before the Court of Common Pleas of Lehigh County shall consist of the request for access, the City's response to the request, the appeal filed with the state Office of Open Records, the transcript of the hearing held by the state Appeals Officer, if any, and the final determination of the state Appeals Officer.

112.07 Fees

A. The fee structure established by the state Office of Open Records is adopted, as required by the state, by the City as follows:

1. Photocopies: (Defined as either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5" x 11" page) -- \$ 0.25 per page

2. Certification of a Record: (Exclusive of notary fees) -- \$1.00 per record, not per page

3. Specialized Documents: (For example, but not limited to, blueprints, color copies, non-standard sized documents) – Actual cost

4. Facsimile/Microfiche/Other Media: -- Actual cost

5. 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 person making the request specifically requests for the record to be duplicated in the more expensive media

6. Postage Fees: Actual cost.

B. If a separate statute authorizes the City to charge a set amount for a certain type of record, the City may charge no more than the statutory amount.

C. If requested records contain both public and non-public information and the City redacts the non-public information, the City will charge the person making the request for the copies it must make of the redacted information in order for the person making the request to view the public record at the Fee Structure outlined in Section A, above. If, after inspecting the records, the person chooses to obtain the copies, no additional fee will be charged.

D. The City may establish user fees for enhanced electronic access to public records, as pre-approved by the state Office of Open Records, by Resolution, from time to time.

E. Except as otherwise provided in this Article 122.06, no other fees may be imposed under the Law unless the City incurs costs for complying with a request and such fees are reasonable.

F. Prepayment: Prior to granting a request for access under the Law, the City will require a person making the request to prepay an estimate of the fees authorized under this Article 112.06 if the fees required to fulfill the request are expected to exceed \$ 100.00. All fees, in any amount, shall be paid prior to the City's release of any requested records.

G. The City may, in its discretion, waive the payment of fees.

Section 2: This Ordinance shall be available for public inspection in the Office of the City Clerk during regular business hours.

Section 3: Severability. If any sentence, clause, section or part of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance.

Section 4: This Ordinance shall become effective 10 days after adoption pursuant to Section 115.19 of the Administrative Code of the City of Allentown.

Section 5: All Ordinances, or parts of Ordinances, inconsistent with the provisions of this Ordinance are hereby repealed to the extent of their inconsistency.

	Yea	Nay
Michael Donovan	X	
Jeanette Eichenwald	X	
Julio A. Guridy	X	
David M. Howells, Sr.		
Tony Phillips	X	
Peter G. Schweyer	X	
Michael D'Amore, President	X	
TOTAL	6	0

I hereby certify that the foregoing Ordinance was passed by City Council and signed by His Honor the Mayor on the 16th day of January, 2009.

CITY CLERK



PUBLIC RECORD REVIEW / DUPLICATION REQUEST FORM
please print legibly

Date of request: _____

Requestor's name: _____

Requestor's address: _____

Requestor's telephone: _____

Requestor's email: _____

I request review duplication of the following records with sufficient specificity to enable the City of Allentown to determine which records are being requested. Use additional sheets if necessary.

I certify that I am a legal resident of the United States. Yes No
(must check a box)

Signature of requestor (must sign)

The request may be submitted in person, via e-mail, or by fax to:

Solicitor's Office
City Hall
435 Hamilton Street
Allentown, PA 18101

Frances Fruhwirth – Right to Know Designee
e-mail: fruhwirthf@allentowncity.org
voice: 610.437.7545
fax: 6610.437.8701

Request number: _____
(assigned by City of

Allentown)