

# **Borough of Zelienople**

## **Policy on the Right-to-Know Law Act 3 of 2008**

The purpose of this policy is to assure compliance with the Pennsylvania Right-to-Know Law, Act 3 of 2008, as signed by Governor Edward G. Rendell on February 14, 2008, to provide access to public records of the Borough of Zelienople (hereinafter referred to as the Borough), to preserve the integrity of the Borough's records, and to minimize the financial impact to the residents of the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

It is the policy of the Borough to require the presence of a designated employee when public records are examined and inspected and to charge reasonable fees for duplication of public records of the Borough. The Borough shall designate an Open Records Officer, who is responsible for assuring compliance with the Pennsylvania Right-to-Know Law, in accordance with the following guidelines.

- Receive and document requests submitted to the Borough of Zelienople.
- Maintain copies (electronic or paper) of requests and supporting documentation as required by the Act.
- Direct requests to other appropriate persons within the Borough or to appropriate persons in another agency.
- Track the Borough's progress in responding to requests.
- Issue interim and final responses under this Act.

### Statements of Policy:

1. To request information from the Borough of Zelienople, the request may be submitted either by U.S. Mail, fax, e-mail, or in person. The request must be sufficiently specific in identifying and describing each public record requested and a name and address to which the response should be addressed. The request neither has to state the requester's purpose for seeking the record nor the intended use of the records. Only written requests receive statutory protection and may be submitted by U.S. Mail, fax, e-mail, or in person. The Borough requires that requesters complete the "Public Record Review/Duplication Request"; however, the Pennsylvania Office of Open Records Right-to-Know Request form will be accepted also.
2. Any legal resident of the United States can request a record, including a person with a green card.

3. All information requests received at the Borough should be forwarded to the Open Records Officer for processing.
4. The Open Records Officer shall respond to the requester within five (5) business days from the date of receipt of the request. If the Borough does not respond within five (5) business days of receipt thereof, the request is deemed denied and the requester has the right to appeal.

The Borough must make a good faith effort to determine whether the requested record is a public record and whether the record is in their possession or control.

In no case shall the Borough be required to create a public record which does not exist or create summaries, composites, or otherwise format records that do not already exist in that format.

5. The Borough may, within the five (5) day response period, notify the requester that more time is needed if the Open Records Officer determines that:
  - (a) The request requires redactions;
  - (b) The record requires retrieval from a remote location;
  - (c) A timely response cannot be accomplished due to staffing limitations;
  - (d) The requester has failed to comply with the Borough of Zelienople policy and procedure requirements; or
  - (e) The requester refuses to pay the applicable fees.

If the records cannot be provided within 30 days, the request is deemed denied unless the requester agrees in writing to the extension of time to respond. If the requester agrees to the extension, the request is deemed denied the day following the agreed-upon date if a response is not provided by that date.

6. If the request is denied, the Borough will provide to requester in writing and will include:
  - (a) Identify and describe the record(s) requested.
  - (b) Specific reasons for the denial, including citations to legal authority.
  - (c) The name, title, business address, business telephone number, and signature of the Borough's Open Records Officer.
  - (d) The date of the response.
  - (e) The procedures for appeal.

7. If a requester makes repeated requests for the same information and such requests are unreasonably burdensome, the Borough may deny access to the record.
8. Requests may be denied if the records are unavailable due to disaster or where the documents are historical, ancient, or rare and such access would cause harm. The contents of the record should be made available in another form, if possible.
9. The Borough may permit access of a non-public record if the disclosure is not prohibited by federal or state law or regulation, or court order; the record is not

privileged; and the Borough determines that the public interest in disclosure outweighs other interests in favor of restriction of access.

10. If access to the public record requested is approved, the public record shall be available for access during the regular business hours of the Borough of Zelienople. The Open Records Officer shall cooperate fully with the requester, while also taking reasonable measures to protect the Borough's public records from the possibility of theft and/or modification. The presence of a designated employee is required when public records are examined and inspected. The Borough must provide certified copies of records, if requested. Further, when documents contain both exempt and non-exempt information, they may be redacted unless the restricted information is an integral part of the record that cannot be separated. The redacted information constitutes denial as to that information.
11. If the Borough produces a record that is not a public record, it must first notify the provider of the record and any person who is the subject of the record, as well as the requester.
12. If a request includes a record provided by a third party and accompanied by a signed, written statement that the record includes trade secrets or confidential proprietary information, the Borough must notify the third party within five (5) days of the request. The third party has five (5) days to comment as to the release of the record. The request must either be granted or denied within ten (10) days of notice to the third party, and the third party must be given notice of the decision.
13. Appeals Procedures:
  - (a) Appeals of a denial of a written request for records are filed with the Office of Open Records.
  - (b) Appeals must be filed within 15 business days of the mailing date of the response or within 15 business days of the date the request was deemed denied.
  - (c) Appeals must state the requester's grounds for asserting that the record is public and any grounds asserted by the Borough for denying the request.
  - (d) Appeals officers have 30 days from the receipt of the appeal to issue a final determination.
  - (e) If no determination is issued within 30 days, the appeal is deemed denied.
  - (f) A hearing may be held prior to the issuance of a final determination.
  - (g) The appeal officer's determination is a final order and must provide a written explanation of the reason of the decision to both the requester and the Borough.
  - (h) The Office of Open Records may adopt procedural rules for appeals. In the absence of such rules, the appeals officer shall rule on procedural matters on the basis of "justice, fairness and the expeditious resolution of the dispute."

- (i) Third parties
  - 1) Persons other than the Borough or requester who have a “direct interest” in the record at issue may file a written request to provide information.
  - 2) Such requests must be filed within 15 days of receiving actual notice of the appeal but must be filed before the appeals officer issues a final order.
  - 3) Appeals officers may grant the request of an interested party if there has been no hearing, no final order, and the officer believes the information is probative.
- (k) Appeals to the Court of Common Pleas:
  - 1) The decisions of appeals officers may be appealed to the court of common pleas where the Borough is located.
  - 2) Review may be sought by either the Borough or the requester.
  - 3) The court’s decision must contain findings of fact and conclusions of law and must explain the rationale for the decision.
  - 4) Petitions for judicial review will stay the release of documents until a decision is issued.
  - 5) The party seeking appeal must notify the Borough, requester, and the Office of Open Records and each shall have the opportunity to respond pursuant to applicable court rules.
  - 6) Attorney fees and costs:  
If a court’s decision grants access previously denied, the court may award reasonable attorney fees if it finds that:
    - a) the Borough acted willfully or with wanton disregard or in bad faith; or
    - b) the Borough asserted exemptions, exclusions or defenses were not based on a reasonable interpretation of law.
  - 7) Fees and costs are also available as sanctions for the Borough or requester if the court finds that the legal challenge was frivolous.

14. Penalties:

- (a) Bad faith denial of access -- up to \$1,500.
- (b) Failure of the Borough or public official to comply with court order -- up to \$500 per day until records are provided.

15. Fees:

Fees for duplication of public records shall be as follows:

- (a) Photocopying: 25 cents per page.

- (b) Duplication of public electronic and/or tape records: actual cost to the Borough of Zelienople of duplicating the public record.
- (c) Certified copies: \$1.00 per page.
- (d) Postage: actual cost to the Borough of Zelienople of mailing the public record.
- (e) Redaction Fee: No fee charged.
- (f) Specialized Documents: Actual cost to the Borough for providing specialized documents.
- (g) 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.
- (h) All police reports, including accident reports: \$15.00 per copy.
- (i) Accident reconstruction reports: at actual cost.
- (j) In the event the estimated costs of fulfilling a request submitted under this policy is expected to exceed \$100.00, the Open Records Officer shall obtain the expected cost in advance of fulfilling the request to avoid an unwarranted expense impact on the Borough of Zelienople's resources.
- (k) The Borough of Zelienople may, in its discretion, waive fees.

16. Forms:

- (a) Borough of Zelienople's Public Review/Duplication Request Form (Exhibit "A").
- (b) Pennsylvania Office of Open Records Standard Right-to-Know Request Form (Exhibit "B").
- (c) Pennsylvania Office of Open Records Right-to-Know Law Appeal Form (Exhibit "C").

17. Records Retention:

The Borough shall adhere to all appropriate federal, state, and local laws and policies in conjunction with records retention and destruction and shall follow the Pennsylvania Historical and Museum Commission – Municipal Government Retention and Disposition Schedule.

18. Borough Website:

The Borough shall list the following information on the municipal website:

- (a) Contact information for the Borough's Open Records Officer.
- (b) Contact information for the Office of Open Records for other applicable appeals officer.
- (c) A form which may be used to file a request.
- (d) Regulations, policies, and procedures of the Borough relating to this Act.

19. Pennsylvania Office of Open Records Contact Information:

**Physical Address:** Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225

**Mailing Address:** Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

**Phone:** 717-346-9903  
**Fax:** 717-425-5343

**Right-to-Know  
Request Email:** [RTK-OOR@state.pa.us](mailto:RTK-OOR@state.pa.us)  
**General Email:** [openrecords@state.pa.us](mailto:openrecords@state.pa.us)

20. This policy takes effect immediately.

THIS POLICY ORDAINED AND ENACTED AT A REGULARLY CONSTITUTED, DULY  
CONVENED MEETING OF THE COUNCIL OF THE BOROUGH OF ZELIENOPLE,  
THIS 9<sup>th</sup> DAY OF MARCH, 2009.

**COUNCIL OF THE BOROUGH OF ZELIENOPLE**

ATTEST

BOROUGH OF ZELIENOPLE

\_\_\_\_\_  
Donald Pepe  
Borough Manager

By: \_\_\_\_\_  
Charles Underwood  
President of Council