

**BOROUGH OF HELLERTOWN  
NORTHAMPTON COUNTY, PENNSYLVANIA  
ORDINANCE NO.: 734**

AN ORDINANCE OF THE BOROUGH OF HELLERTOWN, NORTHAMPTON  
COUNTY, PENNSYLVANIA ADOPTING AN OPEN RECORDS POLICY.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED**, and it is hereby enacted and ordained by the Council of the Borough of Hellertown, Northampton County, Pennsylvania as follows:

**SECTION 1. Purpose**

The purpose of this policy is to assure compliance with Act 3 of 2008, the Pennsylvania Right-to-Know Law, as amended; to provide access to public records of the Borough of Hellertown (hereinafter "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.

**SECTION 2. Designated Open Records Officer**

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 the records of the Borough. The Borough of Hellertown designates the Borough Manager, Charles J. Luthar, as the Open Records Officer, responsible for assuring compliance with the Pennsylvania Right-to-Know Law, in accordance with the following guidelines:

A. The Borough Manager may designate certain employees to process public records requests;

B. The Borough Manager is responsible for minimizing, where possible, the financial impact to the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

C. The Open Records Officer shall be appointed on an annual basis by Resolution at the Borough's reorganization meeting.

**SECTION 3. Request for Records**

A. All requests for public records of the Borough under this policy shall be specific in identifying and describing each public record requested. In no case shall the Borough be required to create a public record which does not exist or to compile, maintain, format or organize a public record in a manner in which the Borough does not currently compile, maintain, format or organize the public record. All request for public records shall be submitted in writing and include the date of the request; requestor's name, address and telephone number; certification of United States residency; signature of requestor; and if duplication is requested, appropriate payment. A sample Open Records Request form is attached hereto.

B. The designated employee shall make a good faith effort to determine whether each record requested is a public record.

C. The Borough shall facilitate a reasonable response to a request for the Borough's public records. In no case is the Borough expected to provide extraordinary staff to respond to the request, but will respond in a manner consistent with the Borough's administrative responsibilities and consistent with the requirements of the Pennsylvania Right-to-Know Law.

D. The designated employee shall respond to the requestor within five (5) business days from the date of receipt of the written request. If the Borough does not respond within five (5) business days of receipt thereof, the request is deemed denied.

E. The response provided by the Borough shall consist of: (1) approval for access to the public record; (2) review of the request by the designated employee; or (3) denial of access to the record requested.

F. 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. The designated employee shall cooperate fully with the requestor, while also taking reasonable measures to protect Borough 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.

#### **SECTION 4. Fees**

A. Fees for duplication of public records shall be as established by the Commonwealth's Office of Open Records. The Borough may, at its discretion, waive fees.

B. In the event the estimated cost of fulfilling a request submitted under this policy is expected to exceed \$100.00, the designated employee(s) shall obtain the expected cost in advance of fulfilling the request to avoid unwarranted expense of Borough resources.

#### **SECTION 5. Response**

A. If the request is being reviewed, the notice provided by the Borough shall be in writing and include the reason for the review and the expected response date, which shall be within thirty (30) days of the notice of review. If the Borough does not respond within thirty (30) days thereof, the request is deemed denied. Review of the request is limited to situations where:

i. The record requested contains information which is subject to access, as well as information which is not subject to access that must be redacted prior to a grant of access. The redacted information is considered a denial as to that information;

- ii. The record requires retrieval from a remote location;
- iii. A timely response cannot be accomplished due to staffing limitations;
- iv. A legal review is necessary to determine whether the record requested is a public record;
- v. The requestor has failed to comply with the Borough's policy and procedure requirements;
- vi. The requestor refuses to pay the applicable fees; or
- vii. The extent or nature of the request precludes a response within the required time period.

Upon determination that one (1) of the factors listed above applies, the Borough shall send written notice to the requestor within five (5) business days of receipt of the request for access. The notice shall include a statement notifying the requestor 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. 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 for, the request for access shall be deemed denied unless the requestor has agreed, in writing, to an extension to the date specified in the notice. If the requestor agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the Borough has not provided a response by that date.

#### **SECTION 6. Appeals**

A. If access to the record requested is denied, the notice provided by the Borough shall be in writing as indicated on the form attached hereto entitled "Denial of Request to Review and/or Duplicate Borough Records".

B. If the request is denied or deemed denied, the requestor may file an appeal with the Commonwealth's Office of Open Records within fifteen (15) business days of a deemed denial. The appeal shall state the grounds upon which the requestor asserts that the record is a public record and shall address any grounds stated by the Borough for delaying or denying the request.

C. Within thirty (30) days of the mailing date of the final determination of the appeals officer, the requestor or the Borough may file a petition for review or other documents as required by rule of court with the Court of Common Pleas for Northampton County. The decision of the Court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision. A petition for review under this Section shall stay the release of documents until a decision is issued.

D. This policy shall be available for review at the Borough office.

**SECTION 7. Repealer**

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 8. Severability**

The provisions of this Ordinance shall be severable, and if any provision hereof shall be declared unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent of the Borough that this Ordinance would have been amended as if such unconstitutional, illegal or invalid provision or provisions had not been included herein.

**SECTION 9.** This ordinance shall become effective five (5) days after its passage or adoption.

ENACTED AND ORDAINED, this 5<sup>TH</sup> day of JANUARY, 2009.

ATTEST:

BOROUGH OF HELLERTOWN

Chares J. Juhar  
Secretary

Gail Nolf  
Gail Nolf, President of Borough Council

APPROVED THIS 5<sup>TH</sup> DAY OF JANUARY, 2009.

Richard T. Fluck  
MAYOR