

RESOLUTION 2012-28

A RESOLUTION AMENDING RESOLUTION 2009-02 PERTAINING TO THE ACCESS TO MANHEIM TOWNSHIP PUBLIC RECORDS

WHEREAS, the Right to Know Law of the Commonwealth of Pennsylvania was amended on February 14, 2008 per Act 3 of 2008, to require municipalities to adopt and post notice of their policies for providing access to public records; and

WHEREAS, Manheim Township prepared such a notice;

WHEREAS, Manheim Township duly adopted Resolution 2009-02 that established a records access policy entitled "Access Manheim Township;"

WHEREAS, the Township desires to amend its "Access Manheim Township" policy to be coordinated with its fee schedule, and to address limited access to building permits and related plan documents and records;

NOW, THEREFORE BE IT RESOLVED that Manheim Township adopts the amendment to "Access Manheim Township," the Township's Open Records Policy and the related policies and procedures set forth in the document.

RESOLVED this 13th day of February, 2012.

COMMISSIONERS OF MANHEIM TOWNSHIP

By


President

ATTEST:


Michael D. Rimer, Secretary

“ACCESS MANHEIM TOWNSHIP” OPEN PUBLIC RECORDS POLICY

February 13, 2012

Pursuant to Section 504 of the Pennsylvania Right to Know Law (Act 3 of 2008), Manheim Township has adopted the following policies and procedures governing citizen access to Manheim Township public records:

GENERAL:

All documents deemed to be public records shall be available for public inspection, retrieval, and duplication in accordance with the Right to Know Law (Act 3 of 2008) and this Open Public Records Policy at the Manheim Township Municipal Building during established business hours (8:00AM to 5:00PM) and/or the Manheim Township Police Department (8:00AM to 4:30PM) with the exception of weekends and Township Holidays.

DEFINITIONS:

Agency - A Commonwealth agency, a local agency, a judicial agency or a legislative agency.

Confidential Proprietary Information: Commercial or financial information received by an Agency: (1) Which is privileged or confidential; and (2) Disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

Public Record - A record, including a financial record, of a Commonwealth or local agency that (1) is not exempt under section 708 of PA 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.

Privilege - The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.

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 - A person that is a legal resident of the United States and requests a record pursuant to PA Act 3 of 2008. The term includes an agency.

Response - Access to a record or an agency's written notice to a requester granting, denying or partially granting and partially denying access to a record.

Trade Secret: - Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term trade secret includes data processing software obtained by an Agency under a licensing agreement prohibiting disclosure.

POLICIES FOR INSPECTING, RETRIEVEING AND DUPLICATING PUBLIC RECORDS OF MANHEIM TOWNSHIP:

- a. Manheim Township Board of Commissioners and staff intend to fully honor the PA Right to Know Law (Act 3 of 2008) and will assist citizens to assemble public records needed to learn about the Township decision making activities and other concerns. The Township will meet this goal by cooperating with citizens as they seek to inspect and retrieve public records and by permitting the Open Records Officer and/or supervising custodian of the public records to make duplications of needed public records.
- b. Manheim Township is aware and sensitive to the fact that there are citizens with physical challenges that may prevent them from completing request forms, and that not all citizens share the same level of comfort reading and writing. With this in mind, the Open Records Officer and appropriate staff will work with all citizens to not only provide appropriate public records, but assist citizens in understanding the purpose of public records.
- c. As per Act 3 of 2008, Manheim Township acknowledges that a written request for public records need not include any explanation of the requestor's reasons for requesting the information or the intended use of the information unless otherwise required by law.
- d. Manheim Township shall maintain the confidentiality of any record which, if disclosed, would constitute an invasion of individual privacy, unless the individual who is the subject of the record consents to public disclosure of the record.
- e. Manheim Township shall make all public records of Manheim Township available for inspection and duplication by any legal resident or agency of the United States.

- f. Manheim Township adheres to the record retention laws of the Commonwealth of Pa and the First Class Township Code and, in accordance with Township Resolution 2007-07, the record retention and disposition guidelines established by PA Historic and Museum Commission's Municipal Records Manual of July 16, 1993 and as may be amended from time to time. Requestors should be aware that certain records may or may not be available under these record retention and disposition guidelines.
- g. Manheim Township is committed to using computer and internet technology to post public information and public records (e.g. meeting minutes, ordinances, decisions) on the internet for public use.
- h. Manheim Township encourages any citizens, and businesses submitting documents to the Township that relate to trade secrets or confidential proprietary information to consider also submitting a written statement detailing that the records, in their view, are confidential. All parties should be advised that merely because a third-party has stamped a record or submitted a written statement indicating that a record is a trade secret or confidential proprietary information does not mean that the record is a trade secret or that it contains confidential proprietary information.
- i. Manheim Township is aware of its obligations and rights under Section 707 of Act 3 of 2008 when a requestor seeks records involving trade secrets and confidential proprietary information that have been provided to the Township by a third-party. In these cases, the Township will use the notification process outlined herein under RESPONSE when both of the following conditions are met:
 - (1) The third-party provided the record to the Agency and;
 - (2) The third-party included a written statement signed by a representative of the third-party stating that the record contains a trade secret or confidential proprietary information
- j. Building Permits, Building Plans and Similar Construction Records: It is the policy of Manheim Township to limit access to building permit applications received, building plans and specifications, inspection reports and similar documents to the public based on exemption requirements outlined in Section 708.(3) of Act 3 of 2008 and as authorized by the PA Uniform Construction Code (Sections 403) (UCC). This includes permit application received prior to permit issuance or after a building permit is issued. The access to these records will be limited to: (a) the building owner or property owner of record, (b) the building permit applicant and holder, (c) the design professional of record, or (d) a third party authorized by the building owner or property owner in accordance with the Records Request Procedures outlined below.

Purpose: The RTKL clearly states that a record the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, shall be exempt from public access. The RTKL goes further to refine this exemption under Section 708.(3).(iii), by referencing "... building plans or infrastructure records that

expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

The PA Uniform Construction Code, which is contained in regulations promulgated by the PA Department of Labor and Industry and codified in Title 34, Chapter 403 of the Pennsylvania Code also provides authorization for discretion by the Township regarding access of building permit application and similar documents. Specifically, the UCC states, in pertinent part that: "...a municipality and a third-party agency acting on behalf of a municipality may prohibit release of applications received, building plans and specifications, inspection reports and similar documents to the public under the act of June 21, 1957 (P.L. 390, No. 212) known as the Right-to-Know Law. 34 Pa. Code § 403.85(e)." (also see UCC Sections 403.41 through 403.48 and Sections 403.61 through 403.66). The UCC expressly states that the Township may prohibit the release of "applications received," which would include building permit documents, plans and similar calculations and information as part of the application submission.

Access to Building Permit Related Records: The Township will only release building permit application records, building plans and similar document to parties cited in this policy. Records request will be processed in accordance with the Records Request Procedures outlined below.

RECORD REQUEST PROCEDURES:

Written Request: Requests for the inspection, retrieval and duplication of Manheim Township public records must be submitted in writing to the Open Records Officer on a form provided by the Township, or by the PA Office of Open Records. Request forms will be accepted when submitted in-person, via e-mail, and/or via facsimile.

The request must identify on the request form and in reasonable detail the record or records sought and the form in which the records are being requested. The request must also include the name and address of the person to whom a response should be addressed.

Special Request Procedures for Building Permit Applications, Building Plans and Similar Documents: In addition to the procedures outlined above, the Township will only release building permit application records, building plans and similar document to (a) the building owner or property owner of record, (b) the building permit applicant or holder, (c) the design professional of record, or (d) a third party authorized by the building owner of record through written permission. The required written permission for third party access shall be submitted on a separate letter and shall be included with the standard RTK request form at the time of the record request. The Township will proceed with processing the request for building permit application records, building plans and similar documents as any other RKT request upon receipt of all required permissions, the RTK Request form and presentation of valid identification, and

verification by the Township. Examples of valid identification include: valid driver's license, government issued identification with photo, signature or physical description, and id number, or passport.

OPEN RECORDS OFFICER:

The Township hereby designates the Township Manager/Secretary as the Manheim Township Open Records Officer for Township Records and the Chief of Police for police and criminal records. The role of the Open Records Officer is to:

- a. Receive requests submitted to the Township and/or Police Department.
- b. Direct requests to other appropriate persons within Manheim Township or to appropriate persons in another agency.
- c. Track the Township or Police Department's progress in responding to requests.
- d. Issue interim and final responses to requests under Act 3 of 2008

The Open Records Officers may be reached at:

For Township Records:

Manheim Township
ATTN: Township Manager-Secretary (Michael D. Rimer)
1840 Municipal Drive
Lancaster, PA 17601

For Police and Criminal Records:

Manheim Township Police Department
ATTN: Open Records Officer
1825 Municipal Drive
Lancaster, PA 17601

RESPONSE PROCEDURES AND GUIDELINES

Response to Written Request: The Manheim Township Open Records Officer shall make a good-faith effort to provide the requested public record(s) as promptly as possible. The Open Records Officer shall cooperate with those requesting records to review and/or duplicate original Township documents while taking reasonable measures to protect township documents from the possibility of theft, damage, and/or modification.

The Open Records Officer shall review all written requests for access to public records. As soon as possible, but no later than five business days after receiving a written request to access public records, the Open Records Officer shall respond to such requests in writing consistent with Act 3 of 2008, the Right-to-Know Law. If access to a

record is denied, the response shall include a reason for denial as stipulated in Act 3 of 2008, the Right-to-Know Law.

Responses to public records requests will also be handled under the following guidelines:

- a. If the Open Records Officer does not send a response to the request within five business days, the request shall be deemed denied;
- b. If the Open Records Officer determines that more than five days is required to evaluate and respond to the request, pursuant to Section 902 of Act 3 of 2008, then a notice shall be sent indicating that the request is being reviewed, the reason for the review and a date when a response will be provided.
- c. If the Open Records Officer determines that the request should be denied, then a response shall be sent describing the record requested and explaining the reasons for the denial and the procedure for appealing the denial.
- d. If the Open Records Officer determines that the request should be granted, then a response shall be sent indicating when, during Manheim Township's regular business hours, the records may be inspected and duplicated, the form in which the records will be duplicated and the fees that will be assessed to cover the cost of duplication. If the estimated fees associated with the request exceed \$100, Manheim Township may require prepayment of the fees before granting the request.
- e. Disruptive requests. The Open Records Officer 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 Township. A denial under the disruptive request guideline shall not restrict the ability to request a different record.
- f. Disaster or potential damage. The Open Records Officer 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. Township Discretion – The Township may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this chapter, if all of the following apply:

(1) Disclosure of the record is not prohibited under any of the following:

- (i) Federal or State law or regulation.
- (ii) Judicial order or decree.

(2) The record is not protected by a privilege.

(3) The Open Records Officer determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

h. Township possession. A public record that is not in the possession of the Township but is in the possession of a party with whom the Township has contracted to perform a governmental function on behalf of the Township, and which directly relates to the governmental function and is not exempt under Act 3 of 2008 shall be considered a public record of the Township. Nothing shall be construed by this policy to required access to any other record of the party in possession of the public record. A request for a public record in possession of a party other than Manheim Township shall be submitted to the Open Records Officer. Upon determination that the record is subject to access under Act 3 of 2008, the Open Records Officer shall assess the duplication fee established herein and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.

i. Response Procedures for Records Containing Trade Secrets and/or Confidential Proprietary Information.

(1) Following a request determined to potentially contain a trade secret and/or confidential proprietary information, the Open Records Officer will first invoke a 30-day calendar extension and notify the requester of the extension in accordance with the procedure for invoking an extension under Section 707 of Act 3 of 2008.

(2) The Township shall also provide notice in writing to the third-party within five business days from the receipt of the request.

(3) The third-party shall have five-business days from the date it receives notification from Manheim Township to provide input on the nature of the record, status of proprietary and confidential information, and appropriate amount of time for the release of the record.

(4) Within 10 business days from the date the Township provided notice to the third-party, the Open Records Officer shall either release the record or deny release of the record to the requestor in accordance with the procedures provided in Act 3 of 2008 for issuing a denial.

- j. **Inspection and Duplication of Public Records.** If a request for inspection and duplication of Manheim Township public records is granted pursuant to this policy, The Open Records Officer will inform the requester of a time during Manheim Township's normal business hours for the inspection of the public records, or request that a Township Department Head or administrative staff member coordinate the inspection and duplication of the record(s). If duplicates of the public records are requested, the duplicates shall be provided upon payment in accordance with this policy and related Township fee schedule.

APPEALS

- a. **Appealing the Denial of a Records Request.** If a request for inspection and duplication of Manheim Township public records is denied or deemed denied, the requester may file an appeal in writing to the Executive Director of the PA Office of Open Records, Commonwealth Keystone Building 400 North Street, Plaza Level Harrisburg, PA 17120-0225
- b. Appeals of all police and criminal records denials or deemed denials shall be made to the District Attorney of Lancaster County, Pennsylvania.
- c. **Appeals Process.** Appeals shall be filed with the PA Office of Open Records within 15 business days of the mailing date of the township's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts the record is a public record and shall address any grounds stated by the township for delaying or denying the request.

FEES

The following fees and charges will be applied to Township publications and public records. Requests for copied public records will be provided to a requestor in accordance with the Township's Open Records Policy and PA Act 3. Fees for the reproduction, certification and administration of records request shall be paid in accordance with the Township's fee resolutions.

Pre-payment of Charges: The township shall require prepayment if the total fees for the records request when it is estimated to exceed \$100.