

**BOROUGH OF COOPERSBURG
LEHIGH COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2008-606

**AN ORDINANCE ADOPTING ACT 3 OF 2008, THE
PENNSYLVANIA RIGHT-TO-KNOW LAW, AND AMENDING
THE BOROUGH OF COOPERSBURG'S OPEN RECORDS
POLCY**

IT IS HEREBY ENACTED AND ORDAINED by the Borough Council of the Borough Of Coopersburg, Lehigh county, Pennsylvania, as follows:

The Borough Of Coopersburg, Lehigh County, Pennsylvania, is adopting the Pennsylvania Right-to-Know Law, and amending its Open Records Policy as follows:

Section 1. Purpose.

The purpose of this ordinance 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 Coopersburg, to preserve the integrity of The Borough Of Coopersburg's records; and to minimize the financial impact to the residents of the Borough regarding the resources utilized in the receipt of 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 public records of the Borough. The Borough Of Coopersburg designates its Borough Manager as its 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 employee(s) to process public record 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. 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

requests 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.

- D. The Open Records Officer or designated employee shall make a good faith effort to determine whether each record requested is a public record.
- E. The Borough shall facilitate a reasonable response to a request for the Borough's public records. In no case is the Borough expected or required 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.
- F. The Open Records Officer or designated employee shall respond to the requester 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.
- G. 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.
- H. 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 Open records Officer or designated employee 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 the Open Records Officer or a designated employee is required when public records are examined and inspected.

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 and by resolution set forth fees as not otherwise established by the Commonwealth's Office of Open Records.

- J. In the event the estimated cost of fulfilling a request submitted under this policy is expected to exceed \$100.00, the Open Records Officer or designated employee shall obtain the expected cost in advance of fulfilling the request to avoid unwanted expense of Borough resources.
- K. 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:

- a) 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;
- b) The record requires retrieval from a remote location;
- c) A timely response cannot be accomplished due to staffing limitations;
- d) A legal review is necessary to determine whether the record requested is a public record;
- e) The requester has failed to comply with the Borough's policy and procedure requirements; or
- f) The requester refuses to pay the applicable fees;
- g) The extent or nature of the request precludes a response within the required time period.

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

- L. 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 Of Coopersburg Records".
- M. If the request is denied or deemed denied, the requester may file an appeal with the Commonwealth's Office of Open Records within fifteen (15) business days of the mailing date of the Borough's notice of denial, or within fifteen (15) days of a deemed denial. The Appeal shall state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the Borough for delaying or denying the request.
- N. Within 30 days of the mailing date of the final determination of the appeals officer, the requester or the Borough may file a Petition For Review or other document as required by Rule Of Court with the Court of Common Pleas of

Lehigh 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.

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

Section 3. Repealer.

That any Ordinance, or part of any Ordinance, conflicting with this Ordinance be and the same is hereby repealed insofar as the same conflicts with this Ordinance.

Section 4. Severability.

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or party thereof not been included herein.

Section 5. Effective Date.

This Ordinance shall become effective on January 1, 2009.

ENACTED AND ORDAINED this _____ day of _____, 2008.

ATTEST

BOROUGH COUNCIL
BOROUGH OF COOPERSBURG

Dawn Kresge,
Borough Manager

By: Dennis Balascak, President
Borough Council

December , 2008

AND NOW, TO WIT, this _____ day of December, 2008, the above is approved.

Jonathan J. Mack,
Mayor