

OFFICIAL

**BOROUGH OF FOREST HILLS
RESOLUTION NO. 1078**

A RESOLUTION OF THE BOROUGH OF FOREST HILLS,
ALLEGHENY COUNTY, PENNSYLVANIA, ESTABLISHING
POLICIES FOR PUBLIC RECORD REQUESTS PURSUANT TO
THE PENNSYLVANIA RIGHT-TO-KNOW LAW.

WHEREAS, the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 et seq., as amended, (the “Right-to-Know Law”) regulates access to public records; and

WHEREAS, Section 504 of the Right-to-Know Law, 65 P.S. § 67.504, requires the Borough of Forest Hills (the “Borough”) to adopt written policies for public record requests and implementation of the Right-to-Know Law; and

WHEREAS, Section 502 of the Right-to-Know Law, 65 P.S. § 67.502, requires the Borough to appoint an Open Records Officer responsible for the specific duties defined by the Right-to-Know Law; and

WHEREAS, the Council of the Borough desires to establish written policies for public record requests, implementation of the Right-to-Know Law and appointment of the Borough Manager as the Borough Open Records Officer pursuant to, and consistent with, the Right to Know Law.

NOW, THEREFORE, the Council of the Borough of Forest Hills hereby resolves as follows, incorporating the above recitals by reference:

SECTION 1. The Forest Hills Borough Public Record Policy is adopted in accordance with the attached document.

SECTION 2. All prior resolutions, including but not limited to Borough Resolution No. 997, are hereby repealed in whole or in part to the extent inconsistent herewith.

SECTION 3. This Resolution shall take effect as of January 1, 2009.

RESOLVED and **ADOPTED** this 17th day of December 2008, by the Council of the Borough of Forest Hills in lawful session duly assembled.

ATTEST:

BOROUGH OF FOREST HILLS

Steven J. Morus
Borough Manager/Secretary
(Seal)

By: _____
Frank Porco
President, Borough Council

FOREST HILLS BOROUGH

PUBLIC RECORD POLICY

§1. **Short Title.** This Policy shall be known as the “Forest Hills Borough Public Record Policy.”

§2. **Definitions.** For purposes of this Policy, the following words and terms shall have the meanings set forth below unless otherwise expressly stated. Any terms or words not defined herein shall be interpreted consistent with the definitions and meanings referenced in §102 of the Pennsylvania Right-to-Know Law, 65 P.S. §67.102, as amended.

Act – The Pennsylvania Right-to-Know Law, 65 P.S. §67.101 *et seq.*, as amended.

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

Borough – The Borough of Forest Hills.

Borough Council – The Council of the Borough of Forest Hills.

Borough Manager – The Manager of the Borough of Forest Hills, or his or her designee.

Borough Office – The offices of the Borough located at 2071 Ardmore Boulevard, Pittsburgh, PA 15221.

Confidential Proprietary Information – Commercial or financial information received by the Borough which is privileged or confidential and the disclosure of which would cause substantial harm to the competitive position of the person or entity that submitted the information to the Borough.

Financial Record – Includes the following: (1) any account, voucher or contract dealing with the receipt or disbursement of funds by the Borough or the Borough's acquisition, use or disposal of services, supplies, materials, equipment or property; (2) the salary or other payments or expenses paid to an officer or employee of the Borough, including the name and title of the officer or employee; or (3) a financial audit report which does not include the work papers underlying an audit.

Open Records Officer (ORO) – The Borough Manager.

Policy – The Forest Hills Borough Public Record Policy.

Public Record – Any record, including a financial record, maintained by the Borough except in the following circumstances: (1) the record is exempt under §708 of the Act, 65 P.S. §67.708; (2) the record is protected by the attorney-work product doctrine, the attorney-client privilege, or other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania; or (3) the record is exempt from disclosure under any other federal or state law or regulation, or judicial order or decree.

Record – Information, regardless of physical form or characteristics, that documents a transaction or activity of the Borough and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the Borough. 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.

Record Request – A written request submitted under this Policy that seeks to access the Borough's public records.

Requester – A person that is a legal resident of the United States and requests a record pursuant to this Act. This term also includes a Commonwealth agency, a local agency, a

judicial agency or a legislative agency as those terms are defined by §102 of the Act, 65 P.S. §67.102.

Response – Access to a record or the Borough’s written notice 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 includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.

§3. **Open Records Officer.**

A. **Appointment.** The Borough Manager is appointed as the Borough Open Records Officer pursuant to the Act.

B. **Functions.** The Borough Manager shall receive requests submitted to the Borough under 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 and issue interim and final responses under the Act. Upon receipt of a request for a public or financial record, the Borough Manager shall do all of the following:

- (1) Note the date of receipt on the written request;
- (2) Compute the day on which the five (5) business day response period under §901 of the Act, 65 P.S. § 67.901, will expire and make a notation of that date on the written request;
- (3) Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled. If the request is denied, the written request shall be maintained for thirty (30) calendar days or, if an appeal is filed, until a final determination is issued under §1101(b) of the Act or the appeal is deemed denied.

§4. **Posting of Information.** The following information shall be posted at the Borough Office and on the Borough’s Internet website:

- A. Contact information for the Borough Open Records Officer;
- B. Contact information for the State Office of Open Records;
- C. The form which shall be used to file a record request; and
- D. The Policy.

§5. **Requests for Access to Borough Public Records.**

A. **General Rule.**

(1) **Public Records.** Unless otherwise provided by law or this Policy, a public record of the Borough shall be accessible for inspection and duplication by a requester in accordance with the Act and this Policy. A record being provided to a requester shall be provided in the medium requested if the record exists in that medium; otherwise it shall be provided in the medium in which it exists. Public records shall be available for access at the Borough Office during the regular business hours of the Borough, which are: 8:00 a.m. to 4:30 p.m., Monday through Friday, unless otherwise stated and excluding legal or governmental holidays. Nothing in this Policy shall provide for access to a record which is not a public record or shall be construed to require access to any Borough computer or any

computer of an individual Borough employee.

(2) **Exemptions.** The Borough exempts from disclosure those records set forth in §708 of the Act, 65 P.S. §67.708. The burden of proving that a Borough public record is exempt from public access shall be on the Borough by a preponderance of the evidence.

B. Written Requests.

(1) All requests for access to Borough records must be in writing on such form as may be prescribed from time to time by the Borough Manager. The Borough will not fulfill oral requests or oral or written anonymous requests for access to records. In the event that the requester wishes to pursue the relief and remedies provided for in the Act, the requester must initiate such relief through a written request to the Borough.

(2) A written request for access to Borough records shall be transmitted to the Borough in person, by mail or by facsimile. A written record request shall be addressed to the Borough Manager, Forest Hills Borough, 2071 Ardmore Boulevard, Pittsburgh, PA 15221, and shall include: (1) an identification or description the requested records with sufficient specificity to enable the Borough to ascertain which records are being requested; and (2) the name and address to which the Borough should address its response. A written record request need not include any explanation of the requester's reason for requesting or intended use of the records. Employees of the Borough are directed to forward all requests for records to the Borough Manager.

§6. Borough Response to Record Requests.

A. General Rule.

(1) Upon receipt of a written record request, the Borough shall make a good faith effort to determine if the record requested is a public record and whether the Borough 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 full in order to receive access to the record requested. The time period for the Borough's response to a written record request shall not exceed five (5) business days from the date the written request is received by the Borough. If the Borough fails to send the response within five (5) business days of receipt of the written record request, then said record request shall be deemed denied.

(2) The Borough may not deny a requester access to a public record due to the intended use of the public record by the requester.

B. Extension of Time. Upon receipt of a written record request, if the Borough Manager determines that one of the situations set forth in subsections (1) through (7) below applies to said record request, then the Borough Manager shall send written notice to the requester within five (5) business days of the Borough's receipt of the record request. This written notice shall include: (1) a statement notifying the requester that the request for access is being reviewed; (2) the reason for the review; (3) a reasonable date by which a response is expected to be provided; and (4) an estimate of the applicable fees owed when the record becomes available. If the date by which the response is expected to be provided is in excess of thirty (30) calendar days, following the five (5) business days from the Borough's receipt of the written record request, then 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 such 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.

(1) The request for access requires redaction of a public record in accordance with §6(G) hereof.

- (2) The request for access requires the retrieval of a record stored in a remote location.
- (3) A timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations.
- (4) A legal review is necessary to determine whether the record requested is a record subject to access under the Act.
- (5) The requester has not complied with the Borough's policies regarding access to records contained in this Policy.
- (6) The requester refuses to pay applicable fees authorized by the Act and imposed by Section 10 hereof.
- (7) The extent or nature of the request precludes a response within the required time period.

C. **Denial of Record Request.** If the Borough's response is a denial of a written record request, whether in whole or in part, then the Borough shall send a written response to the requester at the address listed on the written record request. The written response denying the written record request shall include the following:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority. If the denial is a result of a determination by the Borough that the record requested is not a public record, then the specific reasons for such determination must be included.
- (3) The typed or printed name, title, business address, business telephone number and signature of the Borough Manager on whose authority the denial was issued.
- (4) The date of the response.
- (5) The procedure to appeal the denial under the Act and this Policy.

D. **Creation of a Public Record.** When responding to a request for access, the Borough shall not be required to create a record which does not currently 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 record.

E. **Certified Copies.** If the Borough's response grants a request for access, then the Borough shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees referenced in Section 10 hereof.

F. **Electronic Access.** The Borough may respond to a written record request by notifying the requester that the record is available through publicly accessible electronic means or that the Borough will provide access to inspect the record electronically. If the requester is unwilling or unable to access the record electronically, the requester may, within thirty (30) calendar days following receipt of the Borough's written response, submit a written request to the Borough to have the record converted to paper. The Borough shall provide access to the record in printed form within five (5) business days of the receipt of the written request for conversion to paper.

G. **Redaction.** If the Borough determines that a public record contains information which is subject to access as well as information which is not subject to access, then the Borough's response shall grant access to the information which is subject to access, and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record and cannot be separated, then the Borough shall redact from the record the information which is not subject to access and the

response shall grant access to the information which is subject to access. The Borough may not deny access to the public record if the information which is not subject to access is able to be redacted. Information which the Borough redacts in accordance with this subsection, shall be deemed a denial under Section 6 hereof.

H. **Disruptive Requests.** The Borough may deny a written record request if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Borough. A denial by the Borough of a disruptive request shall not restrict the ability of the requester to request a different record.

I. **Disaster or Potential Damage.** The Borough may deny a written record request: (1) when timely access is not possible due to fire, flood or other disaster; or (2) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the custodian of such record, cause physical damage or irreparable harm to the record. To the extent possible, the contents of a record described herein shall be made accessible to a requester even when the record is physically unavailable.

J. **Public Record Possession.** A public record that is not in the possession of the Borough but is in the possession of a party with whom the Borough has contracted to perform a governmental function on behalf of the Borough, and which directly relates to its governmental function and is not otherwise exempt under this Act, shall be considered a public record of the Borough. Nothing in these regulations or the Act shall be construed to require access to any other record of the party in possession of the public record.

K. **Discarding Requested Records.** If the Borough's response to a requester states that copies of the requested records are available for delivery at the Borough Office and the requester fails to retrieve the records within sixty (60) calendar days of the Borough's response, the Borough may dispose of any copies which have not been retrieved and retain any fees paid to date.

L. **Record Retention.** Nothing in this Policy or the Act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of the Borough established pursuant to law, regulation, policy or other directive.

§7. **Production of Certain Records.**

A. **General Rule.** If, in response to a written record request, the Borough produces a record that is not a public record, the Borough shall notify any third party that provided the record to the Borough of the person that is the subject of the record and the requester.

B. **Requests for Trade Secrets.** Prior to the Borough's disclosure of a record, the Borough shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five (5) business days of receipt of the request for the record. The third party shall have five (5) business days from receipt of notification from the Borough to provide input on the release of the record. The Borough shall deny the record request or release the record within ten (10) business days of the provision of notice to the third party and shall notify the third party of the decision.

C. **Transcripts.** Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding before Borough Council shall be provided to a requester by the Borough stenographer or a court reporter, in accordance with the Borough's procedure or an applicable contract. Following an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding before Borough Council shall be provided to a requester in accordance with the duplication rates established in Section 10 of this Policy.

§8. **Appeal of Borough's Determination.**

A. **Filing of an Appeal.** If a written request for access is denied or deemed denied, then the requester may file an appeal with the State Office of Open Records within fifteen (15)

business days of the mailing date of the Borough's response or within fifteen (15) business days of a deemed denial. The appeal shall specifically state the grounds upon which the requester asserts that the record is a public record and shall specifically address any grounds stated by the Borough for delaying or denying the request.

B. **Determination.** Unless the requester agrees otherwise, the Appeals Officer from the State Office of Open Records shall make a final determination regarding the requester's appeal within thirty (30) calendar days of the mailing date of the appeal. Prior to issuing the final determination regarding the appeal, a hearing may be conducted. The determination of the Appeals Officer shall be a final order. The Appeals Officer shall provide a written explanation of the reason for the decision to the requester and to the Borough.

§9. **Judicial Appeal.**

A. **General Procedure.** Within thirty (30) calendar days of the date a request for access is deemed denied or of the mailing date of a final determination by the Appeals Officer, a requester may file a petition for review (or other document as may be required by rule of court) with the Court of Common Pleas of Allegheny County. A requester is entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. A petition for review shall stay the release of documents until a decision is issued by the Court of Common Pleas of Allegheny County.

B. **Notices.** The Borough, the requester and the State Office of Open Records shall be served notice of any court or other actions commenced, and shall have an opportunity to respond in accordance with applicable court rules.

C. **Record on Appeal.** The record before the Court of Common Pleas of Allegheny County shall consist of: the request; the Borough Manager's response; the requester's appeal; the hearing transcript, if any; and the a final written determination of the Appeals Officer from the State Office of Open Records, if applicable.

§10. **Fees for Borough Services and Expenses.**

A. **Schedule of Fees.** The Borough shall charge a requester the following fees related to the fulfillment of a record request:

- (1) Copies: 25¢ per page. A copy is defined as either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5 inch by 11 inch page.
- (2) Specialized Document Copies: Actual Cost. Specialized documents shall include, but not be limited to, blue prints, color copies, and non-standard sized documents.
- (3) Certification of a Record: \$1 per record (not per page). This certification fee does not include any necessary notarization fees.
- (4) Facsimile/Microfiche/Other Media: Actual cost.
- (5) Postage: The actual cost of mailing.
- (6) Conversion to Paper: If a public record is only maintained electronically or in other non-paper media, the Borough shall charge the requester a fee for converting the document to paper. This fee shall be limited to the lesser of the fee for duplication on paper or for duplication in the native media as provided by Section 10.A.(2) above, unless the requester specifically requests for the public record to be duplicated in the more expensive medium.

B. **Waiver of Fees.** The Borough may waive the fees for duplication of a public record, including, but not limited to, when: (1) the requester duplicates the public record; or (2) the Borough deems it is in the public interest to do so.

C. **Other Fees/Limitations.** Except as otherwise provided by statute, no fees other than those listed in subsection a. above may be imposed upon the requester unless the Borough necessarily incurs costs for complying with the record request, and such fees shall be reasonable. However, the Borough recognizes it shall not impose a fee for its review of a record to determine whether the record is a public record subject to access under the Act.

D. **Prepayment.** Prior to granting a request for access in accordance with the Act, a requester shall prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100. In no event shall any public records or reports be released until the requester first pays the Borough all fees due and payable.

§11. **Amendments.** The Borough Council may amend this Policy by resolution, adopted from time to time.