

RESOLUTION 2009-9

A Resolution of the Council of the City of Hazleton Appointing an Open Records Officer and Establishing a Policy for Handling Records Requests

I. Appointment of Open Records Officer

In accord with the provisions of the Pennsylvania Right-to-Know Law (Act 3 of 2008), the City of Hazleton hereby appoints the City Administrator to serve as its Open-Records Officer, whose duties are outlined by the Right-to-Know Law, and include receiving, managing, tracking and responding to requests for records in accordance with the Right-to-Know Law. In addition to any other duties outlined in the Right-to-Know Law, the Open-Records Officer must date stamp every non verbal request, note the five-day period to respond to each request, maintain an electronic or paper copy of each request and the response to each request.

II. Procedure for Requesting Records

A. *Any person that is a legal resident of the United States may request a record pursuant to the Right-to-Know Law.*

B. *Under the Right-to-Know Law, a “public record” is defined as:*

A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under Section 708;*
- (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.*

C. *A list of the exemptions under Section 708 is available from the Open-Records Officer.*

D. *Requests to view or receive copies of public records should be made on the standardized request form available from the Pennsylvania Department of Community and Economic Development’s Office of Open Records or available from the City’s Open-Records Officer during normal City office hours. A written request may be submitted in person, by mail, by e-mail or by facsimile.*

E. *A written request should identify or describe the records sought with sufficient specificity to enable the City to ascertain which records are being requested and shall include the name and address to which the City shall address its response. In no case shall the City be required to create a public record that does not exist or to compile, maintain, format or organize a public record in a manner in which the City does not currently compile, maintain, format or organize the public record.*

F. Requesters submitting requests verbally or anonymously, and not in writing on the standard request form, shall not reserve a right to appeal a denial of the request.

G. All requests for records shall be directed to the City's Open-Records Officer. All requests received by another official or employee of the City shall be directed by that official or employee to the Open-Records Officer.

H. The Open-Records Officer shall respond to all requests within five (5) business days of the request. Failure to respond within five (5) business days shall be deemed a denial of the request.

I. Within five (5) business days of receipt of a request for records, the Open-Records Officer may send written notification to a requester that the request is being reviewed, the reason for the review, a date that a response is expected to be provided, and an estimate of the applicable fees that will be 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 five business days of receipt of the request, the request 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 an 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.

A notice of review may be provided to a requester if the Open-Records Officer determines that one of the following applies:

- 1. The requested record 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;*
- 2. The request requires retrieval of a record stored in a remote location;*
- 3. A timely response cannot be accomplished due to staffing limitations;*
- 4. A legal review is necessary to determine whether the record is a public record;*
- 5. The requester has not complied with the City's policies and procedures regarding access to public records;*
- 6. The requester refuses to pay applicable fees; or*
- 7. The extent or nature of the request precludes a response within the required time period.*

J. *If access to a record is approved, the public record shall be available for access during the regular business hours of the City. The Open-Records Officer shall be present when public records are examined or inspected.*

III. Appeal of Denial

A. *If a written request for access to a record is denied or deemed denied, the requester shall have fifteen (15) days of the mailing date of the agency's response or fifteen (15) days of the date of a deemed denial, to file an appeal.*

B. *Appeals shall be made to the Pennsylvania Department of Community and Economic Development's Office of Open Records and must state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the City for delaying or denying the request.*

C. *The Office of Open Records shall assign the appeal to an appeals officer who must make a final, written determination within thirty (30) days of receipt of the appeal. If the appeals officer fails to issue a final determination within thirty (30) days, the appeal is deemed denied.*

D. *The City or the requester may file a petition for review of the appeals officer's determination or denial with the Court of Common Pleas of Luzerne County within thirty (30) days of the mailing date of the appeals officer's determination.*

IV. Fees

A. *Fees for postage shall be the actual cost of mailing.*

B. *Fees for duplication and certification of documents are established by the Office of Open Records and a current fee list is available at City Hall during normal business hours.*

C. *If the fees required to fulfill a request are expected to exceed \$100, then the requester may be required to prepay an estimate of fees prior to the fulfillment of the request.*

V. Repealer

Any Ordinance or Resolution, or part thereof, conflicting with this Resolution, is hereby repealed to the extent that it conflicts with this Resolution.

VI. Severability

If any sentence, clause, section or part of this Resolution is for any reason found to be unconstitutional, illegal, or invalid, it shall not effect or impair the remaining provisions, sentences, clauses, sections or parts of this Resolution.

ADOPTED BY COUNCIL this 29th day of January, 2009.

Presented by Graham

Seconded by Mundie

Gabos Y

Graham Y

Mundie Y

Nilles Y

Yannuzzi Y

RESOLUTION PASSES 1/29/09