

BOROUGH OF ALDAN

COUNTY OF DELAWARE

RESOLUTION 2009-03

**POLICIES AND PROCEDURES FOR THE RECEIPT
AND RESPONSE TO REQUESTS PURSUANT TO
THE PENNSYLVANIA OPEN RECORDS LAW**

BE IT RESOLVED, by the Council of the Borough of Aldan, pursuant to the dictates of the Pennsylvania Open Records Law, codified at 65 P. S. §§ 66.1, *et. seq.*, do hereby establish these policies, rules and procedures for the application, receipt and response to requests pursuant to the Pennsylvania Open Records Law and any appeals from denials of same. These policies, rules and procedures are set forth as follows:

SECTION I. DEFINITIONS:

As used within these policies, rules and procedures, the following words or phrases shall have the meaning and import as set forth within these definitions:

- A. **Act or Open Records Law.** The Act of June 21, 1957 (P. L. 390, No. 212), as amended by Act 2002-50, 65 P.S. §§ 66.166.9, commonly referred to as the "Right to-Know Law," and, Act 3 of 2008, commonly referred to as the "Open Records Law".

- B. **Borough.** The Borough of Aldan, Delaware County, Pennsylvania.
- C. **Borough Office(s).** Any office of the legislative and/or executive branch of the government of the Borough of Aldan no matter where physically located, and whether headed by an appointed or an elected official, except for the following: the Zoning Hearing Board and the Civil Service Commission.
- D. **Deemed Denied.** A request is deemed denied if one of the following conditions occurs: (i) the Open Records Official receiving a written Open Records Request fails to respond within the initial 5-business-day period; (ii) the Borough extends the 5-business-day period by up to 30-calendar-days, but then fails to respond by the end of that extended period; or (iii) the Open Records Official notifies the Requester that it requires additional time to respond in excess of the permitted 30-calendar-day period.
- E. **Appeals.** A written administrative appeal filed with the Open Records Appeals Officer by a Requester challenging the Open Records Officer's denial or deemed denial of the Requester's Open Records Request.
- F. **Mailing date.** The date affixed to a response to a request for access to records, which is to be the date the response is deposited in the United States Mail or, for a person submitting a request or exceptions, the date of the postmark on the envelope transmitting the request or exceptions.

G. **Open Records Request.** Either (i) a written request submitted to the Open Records Official asking for access to a Record, a copy of a Record or information purported to be in the possession of the Borough; or (ii) a written records Official asking for access to a Record, a copy of a Record or information purported to be in the possession of the Borough; or (ii) a written request (but not Exceptions or appeal) presented to the Open Records Official that invokes the Act.

H. **Open Records Appeals Officer.** Any official or employee designated by the Borough of Aldan, or the Pennsylvania Office of Open Records, to receive and docket appeals, to consider appeals, conduct hearings, as appropriate, and issue final determinations resolving those appeals.

I. **Open Records Official.** Any official or employee designated by the Borough of Aldan to receive Open Records Requests.

- J. **Public Record.** Any document that satisfies the general definition of "public record" set forth in the Act and does not fall within any of the exceptions set forth therein, as the definition and exceptions are amended from time to time and as the definition and exceptions are interpreted by state, federal and/or local courts.
- K. **Record.** Any document maintained by the Borough, in any form, whether public or not.
- L. **Requester.** A person who requests a record pursuant to the Open Records Law.
- M. **Response.** The Open Records Office's reply to a request made pursuant to the Act. A Response may be either (i) the act of providing the Requester with access to a record, or (ii) the Open Records Official's written notice granting, denying or partially granting and partially denying access to a record.
- N. **Solicitor.** The Borough Solicitor.

SECTION II. OPEN RECORDS OFFICIALS

A. Borough Council designates the Open Records Official as the Borough Secretary, *ex officio*. All Open Records requests must be submitted or directed to this individual.

B. All Requests shall be provided to the Open Records Official at the Aldan Borough Municipal Building, One West Providence Road, Aldan, Pennsylvania 19018. Request may be submitted electronically through the Borough's website at www.aldan-boro.org or via facsimile.

C. The function of the Open Records Official is to receive all Open Records Requests directed to the Borough; to coordinate the preparation of a Response; to track the progress in responding to Open Records Requests; and, to prepare and issue Responses to Open Records Requests.

D. Where a Requestor seeks a physical examination or access to documents, the Borough may set aside a specific Open Records Room or area. If the Borough of Aldan elects not to establish such a room, the Open Records Official shall determine, upon an *ad hoc* basis the building and room where Public Records will be made available to a Requester and the hours of availability. In either instance the Open Records Official has the discretion to establish written policies governing the use of that room including, but not limited to, the hours of access, the need and adequacy of proof of identification, restrictions or prohibitions on the removal of Records, the use of written requests and the ability

of a Requester to bring his or her own photocopying or other equipment into the room.

E. **Open Records Appeals Officer.** The function of the Open Records Appeals Officer is to receive, docket and adjudicate Open Records Appeals; to preside at hearings (if and when hearings are convened); and, to issue final determinations in accordance with the Act.

SECTION III. PROCEDURE FOR SUBMITTING OPEN RECORDS REQUESTS

A. All requests must be submitted to the Borough Open Records Official in writing, whether same is submitted in person, by mail, e-mail or other electronic means or by facsimile.

B. The written request must set forth the name, address, telephone number and facsimile number (if applicable) of the Requestor. Further, the Requestor must identify or describe the records sought with sufficient specificity to enable the Borough to ascertain which records are being requested.

C. While the Act provides that the Requestor need not include the reason for the request or intended use of the records, the Borough is nevertheless permitted to seek this information from the Requestor, as, frequently; such a disclosure will assist the Borough to identify the records of actual relevance to the Requestor.

D. The Borough may create or adopt forms for use by Requestors in preparing written Open Records requests.

E. **Legal residency requirement.** The Act provides that the Borough supply a Requester with access to a Public Record if the Requester is a legal resident of the United States. The Borough may require that the Requester produce photographic identification, or other documentation, to determine proof of legal residency status.

F. The Borough Secretary is the officer designated by the Borough of Aldan as the recipient of all Open Records Requests addressed to the Borough and is the *ex officio* Open Records Official. All Open Records Requests are to be addressed to:

Borough of Aldan
One West Providence Road
Aldan, Pennsylvania 19018

(610) 626-3554 (telephone)
(610) 622-3597 (facsimile)
email: ALDANBOROUGH@comcast.net
Website: www.aldan-boro.org

The Borough shall post this information to its website and shall post it at a location that is publicly accessible.

G. The five (5) business day response period does not begin to run until the Borough's designated Open Records Official has received the request. If an Open Records Request is submitted to a another official or employee of the

Borough other than the Open Records Official, the 5 day response period shall not commence to run until the Open Records Official receives the request.

**SECTION IV. PROCEDURES FOR RESPONDING
TO AN OPEN RECORDS REQUEST**

A. **5-business-day period.** The Act requires that the Commonwealth or its political subdivisions put forth a good faith effort to determine if the requested record is a “public record” and to respond as promptly as possible pursuant to the circumstances existing at the time of the request, and this time shall not exceed 5-business-days from the date the written request is received by the Borough’s Open Records Official. The Act provides that either a final or an interim written response must be issued within 5-business-days from the date the Open Records Official receives the request. If the Open Records Official fails to respond within that timeframe, the Open Records request is deemed denied.

B. **30-Calendar-Day Extension Period.** In general, the Act contemplates that Requestors will receive final responses within the aforementioned 5-business-day period; however, the Act also provides that the Borough may invoke a single extension of time which may not exceed 30-calendar days. If the Borough invokes such an extension, and no timely response is filed or

if the Borough requires more than 30 days to respond to the request, the request is deemed denied.

C. Upon receipt of the Open Records request, the Borough shall date-stamp the request, compute the day on which the 5-business-day period will expire and create a notation of that date, prepare a copy of the request, including all documents submitted with an envelope, if any, in which it came, and shall immediately provide same to the Solicitor for his review. The Borough will also create an official file for retention of the original request.

D. For the purposes of determining the 5-business day period, business days shall be any day that the Aldan Borough Municipal Building is open for business which are generally week days except holidays or days its offices are closed due to the weather conditions, natural or other disasters, or due to the request or direction of law enforcement officials. Further, requests received after regular business hours (either by hand delivery, courier, or by facsimile) shall be deemed to be received on the following business day. For the purpose of these policies, rules and regulations, "regular business hours" shall be 9:30 a.m. to 4:00 p.m. Additionally, the day the Open Records request is received (or deemed to be received) is not counted within the 5-business-day response period [for example, if a Right-to-Know request is received on a Wednesday, the first day of the 5-

business-day period would be Thursday, with a response being due by the following Wednesday].

E. The act of providing a Requester with physical access to a document or a copy of the requested Record, is a "Response" for purposes of this Open Records Policy. Unless the Borough issues written policies to the contrary, only the Open Records Official possesses the authority to permit this access.

F. Where timely access is not provided in accordance with this Section, the Act requires that the Borough's Response be in writing. The Open Records Official has the duty to prepare and send written Responses. In preparing a written Response, the Open Records Official may consult, as necessary, with the Solicitor, and other Borough officials and employees having control, knowledge or concern of the Records.

G. The Borough is not required to create a Public Record that does not already exist, nor is the Borough required to compile, maintain, format, or organize a Public Record in a manner in which the Borough does not currently use.

H. The Open Records Official shall send written Responses to Requesters by one of the following, in her discretion: United States mail, facsimile transmission; electronic transmission; overnight or parcel delivery service; hand-

delivery, or, courier delivery.

I. **Physical Access to Public Records.** The Act requires that, unless otherwise provided by law, the Public Records of the Borough must be accessible for inspection by any Requester during the regular business hours of the County. Unless the Borough adopts written policies to the contrary, the regular business hours of the Borough for purposes of the Act are from 9:30 a.m. until 4:00 p.m. on any business day.

J. **Interim Written Responses.**

1. The Act requires that the Borough must provide a Response to an Open Records Request within five (5) business days unless one or more specific conditions are satisfied and the Borough gives the Requester written notice that additional time will be required. That notice is referred to as an "interim Response."
2. The circumstances in which the Borough may obtain an extension of time in which to provide a final Response are set forth in the Open Records Law.

K. Written Final Responses.

1. **Types of final Responses.** The Act provides for three types of written final Responses:

a. The Borough grants the entire Open Records Request.

b. The Borough refuses the entire Open Records Request.

c. The Borough grants part of the Open Records Request and refuses the remainder.

2. **Deemed Denials.** The failure of the Borough to issue a timely final Response is a Deemed Denial under the terms of the Act.

3. **Final Responses that deny Open Records Requests, either in whole or in part.**

a. A Response that denies an Open Records Request (either in whole or in part) shall list all of the specific reasons relied upon by the Borough for denying the Open Records Request and shall include one or more citations of supporting authority.

b. In the event that the Borough's Response is a denial or a

partial denial, the Response shall also contain a notice informing the Requester of his or her right to file an appeal, and shall set forth the name and mailing address of the Borough.

c. Inaction by the Borough is not a Response, even when it results in a Deemed Denial.

L. Redaction.

1. "Redaction" means the eradication of a portion of a record while retaining the remainder.

2. **Method.** A Record shall be redacted when parts of the Record are not Public Record or are protected and shall not be disclosed as set forth in the Act. Redaction shall be performed in such a way as to maintain the confidentiality or security of the protected information. Thus, for instance, merely crossing out text usually does not suffice if the underlying words can be made out by careful examination. An example of effective redaction is to create a photocopy of an existing document; to completely obliterate the selected text using a black marker; and to photocopy that document (so that the obliterated text on the first copy cannot be read through the marker ink). Other techniques may also be used. In complying with the Open Records

Law's redaction requirements, the Borough is not required to alter their original records.

M. Duplication of Public Records.

1. A Public Record shall be accessible for duplication by a Requester. The Borough does not make duplication equipment available to a Requester but shall provide other means by which a Requester may obtain copies, through Borough personnel.

2. The Borough will assign its own staff to make the duplications requested by the Requester; or it may contract for duplication services and require that the Requester pay the contractor for those services. The Borough shall charge the Requester a reasonable fee(s) that is consistent with the prevailing charges in the geographic location where the duplication occurs.

SECTION V. APPEALS

A. Appeals In-Take Procedures - The Borough's Open Records

Appeals Officer shall follow the following process for handling exceptions:

1. Date-stamp the written exceptions;
2. Retain the envelope and any documents that accompanying the written exception;
3. Send a copy of these materials, as soon as practicable, to the Borough Solicitor;
4. Schedule and conduct hearings, if necessary;
5. Retain the services of a court reporter, or other method for recording testimony, if a hearing is ordered or otherwise required;
6. Docket the receipt of evidence and other submittals;
7. Maintain a record of the final determination; and,
8. Prepare an official record in the event of an appeal to the Court of Common Pleas.

B. Right to File Appeals.

1. If a request is denied or deemed denied, whether in whole or in part, the Requestor has the right to file exceptions to the denial with the Open Records Appeals Officer.

2. Any person or individual who initiates either an oral request or an anonymous request, lacks standing to file exceptions. Any exceptions filed by such a Requestor shall be dismissed for that reason.

3. There is no right to file exceptions to the interim decision to extend the response by 30-calendar days.

C. Time for Filing Exceptions.

1. Exceptions to the Borough's written denial must be filed within fifteen (15) *business* days of the mailing date of the written denial.

2. Exceptions to a deemed denial must be filed within fifteen (15) *calendar* days of the date the request is deemed denied.

3. Exceptions that are untimely filed may be dismissed for that reason.

D. Contents of Appeals.

1. Appeals must state the reasons upon which the Requestor asserts that a record is a public record. Reasons not set forth in writing within the applicable fifteen (15) day period are deemed to be waived and may be disregarded by the Open Records Appeals Official.

2. Exceptions should address the reasons stated for denying the request. Exceptions that fail to comply with this requirement may be dismissed for that reason.

E. Method of Submission of Appeals.

1. Appeals must be set forth in writing and must be correctly addressed and submitted to the Borough's Open Records Appeals Officer addressed care of the

Borough of Aldan, One West Providence Road, Aldan, Pennsylvania 19018. Appeals submitted to any other official, office or address are defective and do not stop the running of the 15-day exceptions period.

2. Appeals may be submitted by posting them through the United States Mail. When this method of submittal is used, the mailing date is the date of the postmark on the envelope. If the postmark is illegible, the mailing date is deemed to be the calendar day that immediately proceeds the date on which the exceptions are received, unless that immediate proceeding day is a Sunday or a federal holiday.

3. If appeals are filed in person, by facsimile, by courier service, by overnight or parcel delivery service or in any other method other than U. S. mail, the "mailing date" is deemed to be the date the exceptions are received by the Appeals Officer.

F. The Appeal Period.

Unless the Requestor agrees otherwise, when a request to file an appeal to a denial, the Appeals Officer must issue a "final determination" within 30-calendar days of the mailing date of the Appeal. If the Requestor seeks or demands a hearing, the Appeals Officer may condition the grant of that request upon the Requestor's written consent or agreement to an extension of the appeal period.

G. The "Final Determination" of the Open Records Appeals Officer.

Appeals are resolved by a "final determination" which is the final order of the Open Records Appeals Officer. A final determination must be set forth in writing and provide a written explanation to the Requestor of the reasons for either the denial or

affirmation of the appeal. This written determination must be provided to both the Requestor and the Borough by the last day of the appeals.

H. Hearings.

1. The Open Records Appeals Officer may, in his/her discretion conduct a hearing, but is not required to do so. The Requestor or the Borough may request that a hearing be held. The decision to hold a hearing rests within the discretion of the Open Records Appeals Officer and is not appealable.

2. In the event of a hearing, the Open Records Appeals Officer shall preside and shall have discretion to admit into evidence such testimony, evidence and documents as is found to be reasonably probative and relevant to an issue in dispute. While the Open Records Appeals Officer may use and be guided by the Pennsylvania Rules of Evidence, he/she is not required to strictly interpret same, and may limit the nature and extent of evidence found to be cumulative.

3. Where the Borough denies access to a document, the Open Records Appeals Officer is not entitled to an *in camera* examination of the withheld document, but rather, the Borough may provide a description of the document, either in writing or by means of oral testimony. Where the document in question is set forth upon a form, a copy of a blank form may also be submitted. The Borough shall not be compelled to produce a withheld document.

4. The Open Records Appeals Officer shall set a timeframe or schedule for the parties to submit documents or memorandum of law in support of their respective positions. The Open Records Appeals Officer may also impose reasonable limits upon

the nature and type of documents and memorandum to be submitted. Where a hearing will be conducted, the Open Records Appeals Officer shall use every effort to schedule same promptly, and may require the parties to submit: a list of witnesses with a synopsis of proposed testimony; a list of exhibits; etc.

5. Parties to any hearing may be represented by counsel, submit testimony and evidence and cross examine witnesses.

6. When exceptions are to be resolved without a hearing, the Pennsylvania Local Agency Law does not apply.

SECTION VI. APPEALS TO THE COURT OF COMMON PLEAS

Any party aggrieved by a decision of the Open Records Appeals Officer's final determination may, within thirty (30) days of the mailing date of that final determination, file an appeal with the Delaware County Court of Common Pleas.

SECTION VII. FEES AND CHARGES

A. The standard and customary fees and charges of the Borough of Aldan for the copying of any standard size documents (documents which are standard letter or legal sizes) shall be at the rate of \$.20 per page. The fees or charges for the copying or reproduction of larger documents, such as plans, blueprints, etc., or for the reproduction of large sets of electronic data, shall be those charges incurred by the Borough in the reproduction of same through commercial means.

B. In accord with the Act, whenever any fee or charge exceeds One Hundred (\$100.00) Dollars, the Borough may require pre-payment of the fees and charges, prior to production of the requested documents.

C. Payment.

The Borough may, at its discretion, require that payment be issued via cash, money order, certified check or bank check.

RESOLVED this 14th day of October, 2009.

BOROUGH OF ALDAN

BY: _____
HARRY SHORT,
President,
Aldan Borough Council

ATTEST:

BY: _____
GINGER V. KAUT,
Secretary,
Borough of Aldan

APPROVED this 14th day of October, 2009.

BY: _____
JAMES R. HOPELY,
Mayor,
Borough of Aldan