

BOROUGH OF DURYEA

ORDINANCE 2009-3

AN ORDINANCE OF THE BOROUGH OF DURYEA REPEALING THE CURRENT POLICY FOR ACCESS TO PUBLIC RECORDS; ADOPTING A NEW POLICY; DESIGNATING AN OPEN RECORDS OFFICER; SETTING TIME LIMITS TO RESPOND TO REQUEST; PROVIDING FEES FOR RECORDS; PROVIDING A POLICY FOR REVIEW OF RECORDS; PROVIDING A FORM OF DENIAL; PROVIDING FOR APPEAL; REPEALING INCONSISTANT ORDINANCES; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS: the Borough is a duly authorized political subdivision; and

WHEREAS; the Borough has adopted a policy for access to public records; and

WHEREAS; the Legislature has enacted Act 3 of 2008 which sets forth the requirements for access to public records; and

WHEREAS; the Borough has adopted this ordinance to comply with said act.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, and it is hereby ENACTED AND ORDAINED AS FOLLOWS:

Section 1: Purpose

The purpose of this policy is to assure compliance with Act 3 of 2008, the Pennsylvania Right-to-know Law as amended; to provide access to public records of Duryea Borough; to preserve the integrity of Duryea Borough's records; and to minimize the financial impact to the residents of the Borough of Duryea regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

Section 2: Designated open Records Officer

A. It is the policy of the Borough of Duryea 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 of Duryea. Duryea Borough designates the Borough Manager as the Open Records Officer, responsible for assuring compliance with the Pennsylvania right to-know Law, in accordance with the following guidelines:

B. The Borough's Open Records Officer shall receive requests submitted to the Borough under the Pennsylvania Right to Know Law, Act 3 of 2008, 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 to the act.

C. Upon receiving a request for a public record, the open records officer shall do all of the following:

- (i.) Note the date of receipt on the written request;
- (ii.) Compute the date on which the five (5) day period under §3(a) will expire and make a notation of that date on the written request;
- (iii.) Maintain a 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 30 days or, if an appeal is filed, until a final determination is issued;
- (iv.) Create a file for the retention of the original request, a copy of the response, a record or written communications with the requester and a copy of other communications.

D. The Borough Manager may, from time to time, designate certain employee(s) of the Borough to process public record requests.

E. The Open Records Officer 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.

F. 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 a public record. All requests for public records shall be submitted in writing and include the date of the request; requester's name, address, and telephone number; signature of requester; and if duplication is requested, appropriate payment.

G. The designated employee shall make a good faith effort to determine whether each record requested is a public record.

H. The Borough shall facilitate a reasonable response to a request for Duryea Borough's public records. In no case is the Borough expected 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.

Section 3: Response to Request for Public Records

A. The 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.

B. 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.

C. If access to the public record requested is approved, the public record shall be made available for access during the regular business hours of the Borough. The designated employee shall cooperate fully with the requester, while also taking reasonable measures to protect Borough public records from the possibility of theft and/or modification. The presence of a designated employee is required when public records are examined and inspected.

Section 4: Review of Request

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

B. 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 denied on the day following the date specified in the notice if the agency has not provided a response by that date.

Section 5: Denial of Request

A. If access to the record requested is denied, the notice provided by the Borough of Duryea shall be in writing as indicated on the form attached hereto entitled “denial of request to review and/or duplicate Duryea Borough records”.

Section 6: Appeal of Denial

A. If the request is denied or deemed denied, the requester may file an appeal with the Commonwealth’ Office of Open Records within fifteen (15) business days 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 agency for delaying or denying the request.

B. Within thirty (30) days of the mailing date of the final determination of the appeals officer, the requester or Borough may file a petition for review or other document as required by Rule of Court with the Court of Common Pleas for Luzerne County. The decision of the court shall contain findings of fact and conclusion of law passed 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 of the Court is issued.

Section 7: Fees

A. The fees for duplication of public records shall be Twenty-five (\$.25) Cents per copy for standard 8.5” x 11” and 8.5” x 14” paper sheets, and actual cost of reproduction for larger copies and maps. Said fee may be amended from time to time as deemed necessary by Borough Council. At no time shall the fees for copies exceed those established by the Commonwealth’s Office of Open records. The Borough may, at it’s discretion, and for good cause shown, waive any and all fees established hereunder.

B. In the event the estimated cost of fulfilling the request under this policy is expected to exceed (\$100.00), the designated employee(s) shall obtain the expected cost in advance of fulfilling the request to avoid unwarranted expense of the Borough's resources.

Section 8: Availability of Policy

A. This policy shall be available for review at the Borough office during normal business hours.

Section 9: Repealer

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

Section 10: Severability

A. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such 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 Duryea Borough Council that this Ordinance would have been adopted has such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

Section 11: Effective date

This Ordinance shall take effect immediately upon final passage.

DULY ENACTED AND ORDAINED into law this ____ day of _____, 2009.

Borough of Duryea,

Al Akulonis, Jr., Council President

Attested:

Lois Morreale, Borough Secretary

Approved the ____ day of _____, 2009.

Keith Moss, Mayor

**BOROUGH OF DURYEA
PUBLIC RECORD REVIEW/DUPLICATION REQUEST**

Please Print Legibly.

Date of Request: ____/____/____

Requester's Name: _____

Requester's Address: _____

Requester's Telephone No.: (____) _____

IMPORTANT: YOU MUST IDENTIFY OR DESCRIBE THE RECORDS WITH SUFFICIENT SPECIFICITY TO ENABLE THE BOROUGH TO DETERMINE WHICH RECORDS ARE BEING REQUESTED. Use additional sheets if necessary.

I request REVIEW DUPLICATION (check as appropriate) of the following records:

Respectfully submitted,

Signature of requestor.

This request may be submitted in person, by mail or by facsimile to:

Borough of Duryea
ATTN: Borough Manager
315 Main Street
Duryea PA 18642.

**BOROUGH OF DURYEA
DENIAL OF REQUEST TO REVIEW AND/OR DUPLICATE**

Date of denial: ___/___/_____

Requester's Name: _____

Requester's Address: _____

RE: Denial of Request to Review and/or Duplicate _____

Date of Request: ___/___/_____

Please be advised that your request to review/duplicate the following records:

has been **DENIED** for the following reasons:

This DENIAL is based upon the following legal authority:

You have a right to appeal this decision. Within fifteen (15) days of the notice of this Denial or deemed Denial, file an appeal with the Commonwealth of Pennsylvania, Department of Community and Economic Development, Office of Open Records. The appeal must state the grounds upon which the requestor asserts that the record is a public and shall address any grounds stated by the Borough for delaying or denying the request.

Borough of Duryea

Open Records Officer.

**BOROUGH OF DURYEA
NOTICE OF REVIEW OF REQUEST**

Date of Notice: ___/___/_____

Requester's Name: _____

Requester's Address: _____

RE: Notice of Review of Request to Review and/or Duplicate _____

Date of Request: ___/___/_____

Please be advised that your request to review/duplicate the following records:

is being reviewed by the Borough's Open Records Officer, for the following reason(s):

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

It is expected that this Request shall be responded to by ___/___/_____ (not to exceed 30 days from date of this Notice.)

It is expected that the fee to duplicate this request will be \$_____.

____ Payment will be due at time of production;

____ Payment is requested in advance.

* If the Borough does not respond within thirty (30) days from the date of this notice, the request is deemed to be **DENIED**.

If your Request is deemed to be Denied, you have a right to appeal this decision. Within fifteen (15) days of the notice of this Denial or deemed Denial, file an appeal with the Commonwealth of Pennsylvania, Department of Community and Economic Development, Office of Open Records. The appeal must state the grounds upon which the requestor asserts that the record is a public and shall address any grounds stated by the Borough for delaying or denying the request.

Borough of Duryea

Open Records Officer.