

Interim Right to Know Policy and Procedure

[09/29/09]

Public Access to Information Chester County Conservation District

I. GENERAL

This policy establishes the District's procedures for meeting its obligations under the Pennsylvania Right to Know Law, which was revised in 2008. It applies to all requests for "public records." This document establishes the framework within which the district will exercise its administrative discretion in the future. The district recognizes the value of making information available to the public, and is committed to continually improving public access to public information and fostering public participation in the decision-making process.

The Office of Open Records may promulgate regulations setting forth different or additional requirements and procedures, and these should be consulted.

A. Open Records Officer

The District has designated the following person who shall serve as its Open Records Officer. All requests for public records are administered by the Open Records Officer. Requests should be directed to the Open Records Officer at the following address:

Name: Christian E. Strohmaier
Title: Acting District Manager
Address: 688 Unionville Road, Suite 200, Kennett Square, PA 19348
Phone: 610-925-4920
Fax: 610-925-4925
Email: cstrohmaier@chesco.org

B. Requests for Public Records

All Right to Know Law requests must be received by the District's Open Records Officer. A requester may make, and the Conservation district may fulfill verbal, written (including email or fax) or anonymous verbal or written requests for access to records under this policy. If the requester wishes to pursue the relief and remedies provided for under the Pennsylvania Right to Know Law (i.e. pursue an appeal of a denial), the request must be in writing.

Requests must describe the records sought with sufficient specificity to enable the District to ascertain which records are being requested. The request must include the name and address to which the response is to be sent. See Appendix A for a sample request form.

If the district receives a request for a public record that is not in the possession of the district, the Open Records Officer will: 1) notify the requester that they do not possess the record requested; 2) direct the request to appropriate persons in another agency.

C. Classification of Records

Public Records

“Public records” are defined as

1. Information that documents a transaction or activity of the district, and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the District,
2. **Except** where a record meets any of the following:
 - a. it falls into one the exemptions under the RTK law,
 - b. access is restricted under any state or federal law or regulation or
 - c. it is protected by a legal privilege, such as attorney-client privilege.

Records Exempt from being Public Records

Under the law some types of records are not available to the public. In this category are personal notes, computer security information, draft minutes, notes from an executive session, confidential proprietary information or trade secrets, medical information, personal identifiers, employee records, labor relations, criminal and non-criminal investigative records, non-real estate tax records, driver records, attorney-client communications, or records that if disclosed could jeopardize state or federal funds. This is a partial list of the exempted records. For a complete list the requester may request a copy of Section 708 of the Right to Know Law from the district. The district will assume that the requester is not asking for these types of records unless specifically requested. In most cases, these exempted records will not be provided.

D. Procedures for Reviewing Requests for Public Records

Operating Procedures

The District’s Open Records Officer will ensure that the Operating Procedures described in Section II of this Policy are followed.

Reviewing Records

Following the submittal of a request the district will make every effort to fulfill the request within five business days of receipt by the District’s Open Records Officer. This may include notifying the requestor that the records will be made available for review and copying at the District.

If the request cannot be fulfilled in five business days, the District’s Open Records Officer will send written notice, including email, to the requester stating the reason(s) why additional time is needed, when the office expects to be able to fulfill the request, and any fees that may be required. See Operating Procedures, Section II.

If the District’s Open Records Officer believes that a record contains confidential proprietary information or trade secrets, the Officer will notify the third party that provided the information of the request, within five days of the request. The third party will then have five days from receipt of the notice to provide input on the release of the record. The Officer will decide whether the information qualifies as confidential proprietary information or trade secrets within ten days after that third party has received the notice.

E. Denial of request for Public Records

If an agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

1. A description of the record requested
2. The specific reasons for the denial, including a citation of supporting legal authority.
3. The printed name, title, business address, business phone number, and signature of the open records officer on whose authority the denial is issued.
4. Date of the response
5. The procedure to appeal the denial

F. Access to Records

The District may respond by notifying the requestor that a record is available through publicly-accessible electronic means such as the District's website, or another agency's website. The District may also provide the records electronically through email or other means such as a CD.

The District may also choose to make the records available for review and copying at the District. However, the district's copying facilities are limited. No records may be removed from the district offices except by district staff. If the district is unable to send the requested documents to the requestor, in house arrangements will be made to have them duplicated. Copying and other fees are listed in Appendix B.

II. OPERATING PROCEDURES

A. *Within 5 business days of receipt of written request by the District Open Records Officer:*

1. Immediately upon receipt of a request the District Open Records Officer will date stamp the request, record the request in a logbook, compute the day that the five-day response expires and make a notation of that date on the request.
2. The district will do a thorough search for the records requested and determine whether they are public records as provided in the Right to Know Law.
3. For records involving programs delegated to or contracted with the district by DEP, the State Conservation Commission or other agency, the district will confer with the State Conservation Commission, DEP or other agency as needed. The district will also confer with district legal counsel as needed (DEP or Department of Agriculture legal counsel (or the county solicitor where appropriate)).
4. The District Open Records Officer reviews, signs, mails and logs response. **A response will be sent within 5 business days of receiving any written request.**
 - The response can be information about how and when the requestor can visit the district to view the records.
 - The response can include information that the requested materials are available upon payment of applicable fees.
 - The response can be a denial of the request in whole or in part; any denials will specify:
 - i. A description of the record requested

- ii. The specific reasons for the denial, including a citation of supporting legal authority
 - iii. The printed name, title, business address, business phone number, and signature of the open records officer on whose authority the denial is issued
 - iv. Date of the response
 - v. The procedure to appeal the denial
- The response may be a statement that the Open Records Officer will be taking additional time (not exceeding 30 calendar days) to respond, if one or more of the following reasons applies:
 - i. Removal of confidential proprietary (or otherwise restricted) information
 - ii. Records are at a remote location
 - iii. Specified staffing limitations prevent a timely response
 - iv. Legal review is required
 - v. Requester is not complying with the district's policies, including failure to pay fees
 - vi. The extent or nature of the request precludes a response within the required time period.

B. *After (if) the District Open Records Officer responds that some or all of records requested are available:*

1. The Open Records Officer provides access to the records as arranged with the requestor.
2. If records are electronic, Open Records Officer arranges for computer viewing, duplication or the District may respond by notifying the requestor that a record is available through publicly-accessible electronic means such as the District's website, or another agency's website.
3. If the district will make copies, and if copying costs exceed \$100, Open Records Officer collects costs before copying and logs payment; upon delivery of copies, Open Records Officer collects any unpaid fees and logs payment.
4. If the requester fails to retrieve the requested records within 60 days of the districts response the district may dispose of any copies which have not been retrieved and retain any fees paid to date.

III. APPEALS

A. Appealing the District's Response

The Right to Know Law provides an appeal process through the Office of Open Records. Here is a summary of that process:

1. File an appeal. If a requestor wishes to dispute the district's denial, the requestor must send his or her reasons to the Office of Open Records, ATTN: **Terry Mutchler, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor Harrisburg PA 17120. The reasons for the dispute must be mailed within 15 business days of the mailing date indicated on the district's response, or if no response is provided then within 15 days of the date the request is deemed to be denied.**

The requestor's dispute letter must state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the district for delaying or denying the request.

2. Appeal Process. Unless the requestor agrees otherwise to the timing, the appeals officer will make a final determination within 30 calendar days of the date the dispute letter is mailed. Prior to issuing its determination, the appeals officer may, at its discretion, conduct a hearing. The appeals officer will provide a written explanation of the reason for the decision to the requester and the District. If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.

Right to Know Law Record Request

Schedule of Fees

Section 1307 of the Right-To-Know law requires the Office of Open Records to establish a fee structure for Commonwealth Agencies and Local Agencies. To promote uniformity among all agencies, the Office of Open Records encourages Judicial and Legislative agencies, which can set their own fees, to adopt the following fee structure. All agencies are advised that duplication fees can be waived. The Office of Open Records establishes the following fee structure in accordance with the law. The Law requires that the Office of Open Records review the fee structure biannually. The Office will review the fee structure in June of 2009. Any updates will be placed on our website by June 30, 2009.

Fee Structure

| Record Type | Fee |
|--|---|
| Copies: (A "photocopy" is either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5" x 11" page) | The first ten (10) copies are free of charge. A charge of 25 cents per page for all copies over the first ten. |
| Certification of a Record: | An agency may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record. The Office of Open Records recommends no more than \$5 per record to certify a public record. Please note that certification fees do not include notarization fees. |
| Specialized documents: (For example, but not limited to, blue prints, color copies, non-standard sized documents) | Actual Cost |
| Facsimile/Microfiche/Other Media: | Actual Cost |
| Redaction Fee: | No Redaction Fee May be Imposed |
| Conversion to Paper: | If a record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media unless the requester specifically requests for the record to be duplicated in the more expensive medium. (Sec. 1307(e)). |
| Postage Fees: | Fees for Postage May Not Exceed the Actual Cost of Mailing |

Please Also Be Advised:

- **Statutory Fees:** If a separate statute authorizes an agency to charge a set amount for a certain type of record, the agency may charge no more than that statutory amount. For example, a Recorder of Deeds may charge a copy fee of 50 cents per uncertified page and \$1.50 per certified page under 42 P.S. § 21051. Police departments have the authority to charge up to \$15 per report for providing a copy of a vehicle accident report. 75 Pa.C.S. §3751 (b)(2). Philadelphia police may charge up to \$25 per copy. *Id.* at (b)(3). State police are authorized to charge “\$5 for each copy of the Pennsylvania State Police full report of investigation.” 75 Pa.C.S. §1956(b).
- **Inspection of Redacted Records:** If a requester wishes to inspect rather than receive a copy of a record and the record contains both public and non-public information, the agency shall redact the non-public information. An agency may not charge the requester for the redaction. However, the Agency may charge for the copies it must make of the redacted material in order for the requester to view the public record. The fee structure outlined above will apply. If, after inspecting the records, the requester chooses to obtain the copies, no additional fee may be charged.
- **Enhanced Electronic Access:** If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester, the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by this Act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be pre-approved by the Office of Open Records and shall not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency. Please submit any request to the

Office of Open Records
400 North Street
Harrisburg, PA. 17120.

- **Fee Limitations:** Except as otherwise provided by statute, the law states that no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency’s review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this Act. No fee may be charged for searching for or retrieval of documents. An agency may not charge staff time or salary for complying with a RTK request.
- **Prepayment:** Prior to granting a request for access in accordance with this Act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100.
- **Once the request is fulfilled and prepared for release, the Office of Open Records recommends that the agency obtain the cost of the records prior to releasing the records. This recommendation is designed to avoid situations in which the agency provides the records and the requester fails to submit payment.**