

**RESOLUTION NO. 2009-1
POLICY OF THE BOROUGH OF BRYN ATHYN
REGARDING ACCESS TO PUBLIC RECORDS**

The purpose of this policy is to assure compliance with the Pennsylvania Right-to-Know Law, as amended by Act 3 of 2008 (2008, Feb. 14, P.L. 6, No. 3), and codified at 65 P.S. 67.101 and sections following (hereinafter the "Right to Know Law"), to provide access to the public records of the Borough of Bryn Athyn (hereinafter the "Borough"), and to preserve the integrity of Borough's records.

The following rules and regulations are hereby adopted in order for the Borough to implement the Right to Know Law:

ACCESS

1. **Open Records Officer.**

- (a) The Borough manager is hereby appointed the Borough's Open Records Officer in accordance with the Right to Know Law. The Open Records Officer may be replaced from time to time by the further resolution of the Borough Council. The Open Records Officer may be contacted as follows:

Victoria S. Trost, Borough Manager
2835 Buck Road, P.O. Box 683
Bryn Athyn, PA 19009-0683
Telephone: (215) 947-9889
Fax: (215) 947-3739
Email: vikkit@brynathynboro.org

- (b) The functions of the Open Records Officer shall be as follows:
- (i) To receive requests submitted to the Borough under the Right to Know Law, 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 required under the Right to Know Law.
- (ii) Upon receiving a request for a public record, the Open Records Officer shall do all of the following:
- (1) Note the date of the receipt on the written request.
- (2) Compute the day on which the five-day period under section 901 of the

Right to Know Law 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 30 days or, if an appeal is filed, until a final determination is issued under section 1101(b) of the Right to Know Law or the appeal is deemed denied.

2. **Form.** All written requests shall be submitted on a form promulgated by the Pennsylvania Office of Open Records. The request form will be available at the Borough municipal offices upon request and free of charge, and will also be available on the Borough's internet website, and the Office of Open Records internet website. A copy of the form is attached to this resolution as Exhibit "A".

3. **Special Circumstances for Denying or Granting Access.**

(a) **Disruptive requests.**

- (i) The Borough may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.
- (ii) A denial under this subsection shall not restrict the ability to request a different record.

(b) **Disaster or potential damage.**

- (i) The Borough may deny a requester access:
 - (A) when timely access is not possible due to fire, flood or other disaster;
or
 - (B) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.
- (ii) To the extent possible, the contents of a record under this subsection shall be made accessible to a requester even when the record is physically unavailable.

(c) **Borough Discretion.** The Borough may exercise its discretion to make any otherwise

exempt record accessible for inspection and copying under this chapter, if all of the following apply:

- (i) Disclosure of the record is not prohibited under any of the following:
 - (A) Federal or State law or regulation.
 - (B) Judicial order or decree.
 - (ii) The record is not protected by a privilege.
 - (iii) The Borough determines that the public interest favoring access outweighs any individual, Borough or public interest that may favor restriction of access.
- (d) Borough Possession.
- (i) A public record that is not in the possession of the Borough but is in possession of a party with whom the Borough has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under the Right to Know Law, shall be considered a public record of the Borough.
 - (ii) A request for a public record in possession of a party other than the Borough shall be submitted to the Open Records Officer of the Borough. Upon a determination that the record is subject to access under this act, the Open Records Officer shall assess the duplication fee established by the Pennsylvania Office of Open Records, and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.

ACCESS

4. Requests. The Borough may fulfill verbal, written or anonymous verbal or written requests for access to records under the Right to Know Law. If the requester wishes to pursue the relief and remedies provided for in the Right to Know Law, however, the request for access to records must be a written request.

5. Written Requests. A written request for access to records may be submitted in person, by mail, by e-mail, or by facsimile. A written request must be addressed to the Open Records Officer. Employees of the Borough shall be directed to forward requests for records to the Open Records Officer. A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the Borough should address its response. A written request need not include any explanation of the requester's reasons for requesting or intended use of the records unless otherwise

required by law.

6. Creation of Record Not Required. When responding to a request for access, the Borough shall not be required to create a record that does not currently exist or to compile, maintain, format or organize a record in a manner in which the Borough does not currently compile, maintain, format or organize the record.

7. Redaction. If the Borough determines that a public record contains information that is subject to access as well as information that is not subject to access, the Borough's response will grant access to the information that is subject to access and deny access to the information that is not subject to access. If the information that is not subject to access is an integral part of the public record, the Borough will redact from the record the information that is not subject to access, and the response will grant access to the information that is subject to access. The Borough may not deny access to the record if the information that is not subject to access can be redacted.

8. Production of Certain Records.

(a) General Rule. If, in response to a 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, the person that is the subject of the record, and the requester.

(b) Requests for Trade Secrets. The Borough will 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 business days of receipt of the request for the record. The third party shall have five business days from receipt of notification from the agency to provide input on the release of the record. The Borough shall deny the request for the record or release the record within ten 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, the Borough shall provide a transcript of an administrative proceeding to a requester. The Borough shall charge a fee to the requester for duplication of the transcript, which fee shall be as set by the Pennsylvania Office of Open Records.

9. Fees.

(a) Postage. A fee shall be charged for postage costs incurred by the Borough in responding to any request. Fees for postage may not exceed the actual cost of mailing.

(b) Duplication. A fee shall be charged for duplication costs incurred by the Borough in responding to any request. The fee to be charged for duplication shall be as set

by the Pennsylvania Office of Open Records.

- (c) Certification. The Borough will impose a fee of five dollars (\$5.00) 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.
- (d) Conversion to Paper. If a record is maintained electronically or in other nonpaper media, the fees for duplication from the nonpaper media to paper shall be the same as for duplication on paper.
- (e) Waiver of fees. The Borough may waive the fees for duplication of a record, including, but not limited to, when:
 - (i) the requester duplicates the record; or
 - (ii) the Borough deems it is in the public interest to do so.
- (f) Prepayment. Prior to granting a request for access to a public record or records, the Borough will require a requester to prepay an estimate of the fees authorized under this paragraph if the fees required to fulfill the request are expected to exceed \$100.00.

BOROUGH RESPONSE

10. General Rule. Upon receipt of a written request for access to a record, 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 will respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. Subject to the provisions of section 11, the time for response shall not exceed five business days from the date the written request is received by the Open Records Officer. If the Borough fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.

11. Extension of Time.

- (a) Determination. Upon receipt of a written request for access, the Open Records Officer shall determine if one of the following applies:
 - (i) the request for access requires redaction of a record in accordance with section 5, above;
 - (ii) the request for access requires the retrieval of a record stored in a remote location;

- (iii) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
- (iv) a legal review is necessary to determine whether the record is a record subject to access under the Right to Know Law;
- (v) the requester has not complied with the Borough's policies regarding access to records;
- (vi) the requester refuses to pay applicable fees authorized by the Right to Know Law; or
- (vii) the extent or nature of the request precludes a response within the required time period.

(b) Notice.

- (i) Upon a determination that one of the factors listed in subsection (a) applies, the Open Records Officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a).
- (ii) 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 30 days, following the five business days allowed for in section 10, 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.
- (iii) If the requester agrees to the 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.

12. Denial. If the Borough'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:

- (a) A description of the record requested.
- (b) The specific reasons for the denial, including a citation of supporting legal authority.
- (c) The typed or printed name, title, business address, business telephone number and signature of the Open Records Officer on whose authority the denial is issued.

- (d) Date of the response.
- (e) The procedure to appeal the denial of access under the Right to Know Law.

13. **Certified Copies.** If the Borough's response grants a request for access, the Borough shall, upon request, provide the requester with a certified copy of the record if the requester pays the fee specified in section 9.

14. **Posting.** This resolution shall be posted in the Borough municipal offices located at 2835 Buck Road, Bryn Athyn, PA 19001, and on the Borough's internet website at www.brynathynboro.org. In addition, information regarding the procedures to be followed by a requester to appeal a denial or deemed denial of his or her request, including all contact information for the Pennsylvania Office of Open Records, shall be posted on the Borough's internet website.

15. **Severability.** In the event that any section, sentence, clause or word of this ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose the validity of the remaining portions of this ordinance.

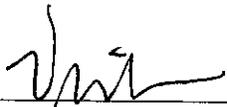
16. **Repealer.** All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed.

17. **Effective Date.** This Resolution shall become effective as of the first day of January, 2009.

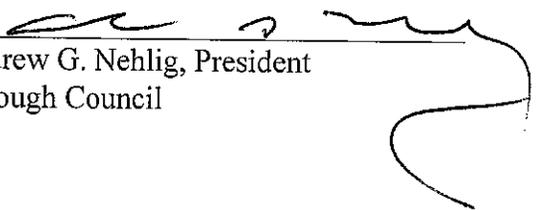
RESOLVED and ADOPTED this fifth day of January, 2009.

BOROUGH OF BRYN ATHYN

Attest:



Victoria S. Trost, Secretary

By: 

Andrew G. Nehlig, President
Borough Council

