BOROUGH OF WILSON

RESOLUTION 1163

A Resolution of the Borough of Wilson, Northampton County, Commonwealth of Pennsylvania creating an Open Records Policy.

Whereas, the Pennsylvania General Assembly enacted Act 3 of 2008 that requires local agencies to create an Open Records Policy; and

Whereas, the Borough of Wilson desires to update its policy in order to comply with Act 3 of 2008.

NOW THEREFORE, the Council of the Borough of Wilson does hereby resolve:

Open Records Policy for the
Borough of Wilson

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 the Borough; to preserve the Borough's records; and to minimize the financial impact to the residents of the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

2. Designated Open Records Officer:

It is the policy of the Borough 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. Wilson Borough designates the Borough Secretary as the Open Records Officer, responsible for assuring compliance with the Pennsylvania Right-to-Know Law, in accordance with the following guidelines:

A. The Borough Secretary, with approval from Borough Council, may designate certain employee(s) to process public record requests.

B. The Borough Secretary 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.

C. 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 the public record. All requests for public

records shall be submitted in writing and include the date of the request; requestor's name, address, and telephone number; certification of United States residency; signature of requestor; and if duplication is requested, appropriate payment.

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

E. The Borough shall facilitate a reasonable response to a request for the Borough's public records. Borough will not 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.

F. The designated employee shall respond to the requestor 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.

G. 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.

H. If access to the public record requested is approved, the public record shall be 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.

I. Fees for duplication of public records shall be as established by the Commonwealth's Office of Open Records. The Borough may at its discretion waive fees.

J. In the event the estimated cost of fulfilling a request submitted 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 Borough resources.

K. 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:

(1) 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;

(2) The record requires retrieval from 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 requested is a public record;

(5) The requestor has failed to comply with the Borough's policy and procedure requirements; or

(6) The requestor refuses to pay the applicable fees.

(7) The extent or nature of the request precludes a response within the required time period.

Upon a determination that one of the factors listed above applies, the Borough shall send written notice to the requestor within five business days of receipt of the request for access. The notice shall include a statement notifying the requestor that the request for access is being reviewed, the reasons 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 if expected to be provided is in excess of 30 days, following the five business days allowed for, the request for access shall be deemed denied unless the requestor has agreed in writing to an extension to the date specified in the notice. If the requestor agrees to the 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.

L. If access to the record requested is denied, the notice provided by the Borough shall be in writing as indicated on the form attached hereto entitled "Denial of Request".

M. If the request is denied or deemed denied, the requestor may file an appeal with the Commonwealth's Office of Open Records within fifteen (15) business days of the mailing date 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 requestor asserts that the record is a public record and shall address any grounds stated by the agency for delaying or denying the request.

N. Within 30 days of the mailing day of the final determination of the appeals officer, the requestor or Borough may file a petition for review or other document as required by rule of court with the Court of Common Pleas of Northampton County. The decision of the court shall contain findings of fact and conclusions of law based 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 is issued.

O. This policy shall be available for review at the Borough Office.

Section 2. Repealer.

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

Section 3. Severability.

If any sentence, clause, section, or part of this Resolution 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 Resolution.

Section 4. Effective Date.

This Resolution shall become effective immediately.

Resolved this 11th day of May, 2009.

ATTEST:

Secretary

BOROUGH OF WILSON

By

President of Council

APPROVED this 11th day of May, 2009.

Mayor