

Open Records Policy – Upper Macungie Township

Effective January 4, 2016

Last updated on December 18, 2015

Upper Macungie Township has adopted a policy to comply with the Commonwealth's Act 3 of 2008, 65 P.S. §§ 67.101 et seq., commonly known as the "Right to Know Law." With certain exceptions, members of the public have the right to inspect and/or copy such records upon request.

1. Definitions

- a. **Right to Know Law (or Open Records Law).** Act 3 of 2008, 65 P.S. §§ 67.101 et seq., commonly known as the Right to Know Law ("Law").
- b. **Business day.** Monday through Friday during regular business hours (7:30am - 4:00pm), except those days when the Township is closed. For the purpose of this Open Records Policy, Township Departments are closed when any of the following apply: (a) the Township operates on an "essential services only" basis; (b) the Township is closed for four or more hours during regular business hours; or (c) the Township closes for any portion of regular business hours on an emergency basis.
- c. **Public Record.** Any document that satisfies the general definition of "public record" set forth in the Law 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.
- d. **Open Records Officer.** Any official or employee of Upper Macungie Township who is officially assigned responsibility for receiving, tracking and responding to requests for information under the Right to Know Law. Upper Macungie Township may designate a Deputy or Secondary Open Records Officer to act in the absence of an Open Records Officer.
- e. **Requester.** A person who requests a record under the Right to Know Law.
- f. **State Office of Open Records.** The State Office, under the Department of Community and Economic Development, as explained in §1310 of the Right to Know Law. The Office of Open Records shall be responsible for many duties, which include (but are not limited to): issuing advisory opinions, training agencies and public employees, assigning appeals officers to review decisions and conducting a biannual review of fees allowed under the Law.

2. Open Records Officer

All open records requests should be submitted directly to the Upper Macungie Township Open Records Officer or the Deputy Open Records Officer, with the exception of Upper Macungie

Police Department requests. Requests for Police Incident Reports or other police business must be directed to the Open Records Officer for the Upper Macungie Police Department.

The current list of Officers can be found below:

Department

Officer & Contact Information

Upper Macungie Township
Open Records Officer

Ashley Godshall
Secretary of Planning & Zoning
8330 Schantz Road
Breinigsville, PA 18031
Phone: (610) 395-4892, Ext. 114
Fax: (610) 395-9355
openrecords@uppermac.org

Upper Macungie Township
Deputy Open Records Officer

Kathy Rader
Asst Dir. of Community Development
8330 Schantz Road
Breinigsville, PA 18031
Phone: (610) 395-4892, Ext. 116
Fax: (610) 395-9355
openrecords@uppermac.org

Upper Macungie Police Department
Open Records Officer

Keri Diehl
Office Manager
37 Grim Road
Breinigsville, PA 18031
Phone: (484) 661-5911
Fax: (610) 841-4922
openrecords@uppermac-pd.org

Upper Macungie Police Department
Deputy Open Records Officer

Joseph Wilson
Deputy Chief
37 Grim Road
Breinigsville, PA 18031
Phone: (484) 661-5911
Fax: (610) 841-4922
openrecords@uppermac-pd.org

3. Procedure

The Law requires Upper Macungie Township to act upon each non-anonymous written request when such request is made in person, by mail, by facsimile or by e-mail. The Law does not require that Upper Macungie Township act upon an oral request, and Upper Macungie Township shall refuse to accept oral requests. Furthermore, the Law does not require Upper Macungie Township to act upon an anonymous request, and Upper Macungie Township will refuse to honor an anonymous request.

Pursuant to the Law, the State Office of Open Records has created and published on its website a standard statewide form which must be accepted by Upper Macungie Township for the filing of a request. (<http://openrecords.state.pa.us/portal/server.pt>) (Also see Attachment #1). Effective January 4, 2016, Upper Macungie Township will require the standard statewide form be used for the submission of Right to Know requests, and will not consider a request to be a written request pursuant to the Right to Know Law unless the request is submitted on or with the standard statewide form.

Beginning January 4, 2016, Upper Macungie Township will consider any request not submitted on or with the standard statewide form to be an informal request not subject to the Right to Know Law.¹ If a requester submits a request on or with the standard statewide form after submitting an informal request for the same (or similar) records, Upper Macungie Township will consider the informal request to have been withdrawn. Upper Macungie Township reserves the right, at its sole discretion, to require a written request pursuant to the Right to Know Law before releasing records. A copy of the standard statewide form appears at the end of this policy.

The Law sets forth various specifications for the contents of a written request. To qualify as a written request under the Right to Know Law and the Upper Macungie Open Records Policy, the request must (a) be directed to the appropriate Open Records Officer designated above, (b) be submitted on or with the standard statewide form, and (c) contain, at a minimum, the following information:

- i. name of requester;
- ii. address of requester; and
- iii. records being sought, identified or described with sufficient specificity to allow Upper Macungie Township to ascertain which records are being requested.

Under the Law, Upper Macungie Township has a duty to make a good faith effort to determine if the record(s) requested is a public record and to respond as promptly as possible under the circumstances existing at the time of the request; this time shall not exceed five (5) business days from the date the request is received by the agency's Open Records Officer. The Law provides that either a final or interim response be provided to the requester within five (5) business days

¹ Upper Macungie Township reserves the right, at its sole discretion, to use the Right to Know Law as guidance in responding to informal requests for records and/or information.

from the date of receipt by the agency. If the agency fails to respond within this five (5) day time period, the Open Records Request is deemed denied.

The Law and Upper Macungie's policy contemplates that requesters will receive a response within five (5) business days. The Law, however, does provide Upper Macungie with specific reasons that may be invoked to receive a single extension of time which shall not exceed thirty (30) calendar days. If an extension is invoked and no response is provided to the requester within the thirty (30) day time period, the Open Records Request is deemed denied. Additionally, should Upper Macungie notify the requester it needs more than the maximum thirty (30) day extension, the request is 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 deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

Upper Macungie Township's final response to a request will do one of the following:

- i. grant the request;
- ii. deny the request;
- iii. grant the request in part and deny the request in part; or
- iv. grant the request and redact part of the information provided pursuant to the Law and/or other applicable federal, state and local law.

4. Appeals of Denied Requests

If a request for access to a record is denied (in whole or in part) or deemed denied, the requester may file an appeal within fifteen (15) business days of the mailing date of Upper Macungie Township's denial as follows:

Records Other Than Criminal Investigative Records

Appeals of denials related to requests for records other than criminal investigative records must be directed to the Pennsylvania Office of Open Records at the following address:
Commonwealth of Pennsylvania, Office of Open Records, Commonwealth Keystone Building,
400 North Street, 4th Floor, Harrisburg, PA 17120-0225.

Criminal Investigative Records

Appeals of denials related to requests for criminal investigative records (denials pursuant to Section 708(b)(16) as relating to a criminal investigation) must be directed to the Lehigh County District Attorney's Office within fifteen (15) business days of the mailing date of Upper Macungie Township's denial. Appeals to the Lehigh County District Attorney's Office should be directed to the following address: Lehigh County District Attorney's Office, Lehigh County Courthouse, Room 307, 455 W. Hamilton St., Allentown, PA 18101-1614.

For All Administrative Appeals

Unless the requester agrees otherwise, the Appeals Officer shall make a final determination which shall be mailed to the requester and Upper Macungie Township within thirty (30) days of receipt of the appeal. Should the Appeals Officer fail to issue a ruling within thirty (30) days, the appeal is deemed denied.

Before a final determination is issued, a hearing may be held. The determination by the Appeals Officer shall be a final order. The Appeals Officer shall provide a written explanation of the reasons for the decision to the requester and Upper Macungie Township.

Within thirty (30) days of the mailing date of the final determination of the Appeals Officer, a requester, or Upper Macungie Township may file a petition for review or other document(s) as required by rule of court with the Lehigh County Court of Common Pleas.

5. Fees and Charges

Fees for duplication of records have been established and posted by the State Office of Open Records. Upper Macungie Township will charge fees consistent with the State Office of Open Records regulations. Upper Macungie Township reserves the right to impose additional fees if it incurs costs for complying with a request, pursuant to the Right to Know Law; such additional fees, when charged, must be reasonable. This includes, but is not limited to, fees for enhanced electronic access and certified copies of documents. (See Attachment #2)

6. Written Policies and Regulations

Upper Macungie Township and each Open Records Officer shall retain the discretion and authority to adopt any other written policies that are consistent with the Right to Know Law, and these policies, as amended from time to time, that they deem to be necessary or prudent, consistent with the Right to Know Law.

ATTACHMENT #1: STANDARD RIGHT TO KNOW REQUEST FORM



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: _____

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): _____

NAME OF REQUESTER : _____

STREET ADDRESS: _____

CITY/STATE/COUNTY/ZIP(Required): _____

TELEPHONE (Optional): _____ EMAIL (optional): _____

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary*

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? YES NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

ATTACHMENT #2: FEE SCHEDULE



pennsylvania

OFFICE OF OPEN RECORDS

Fee Structure

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.

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)	Up to \$ 0.25 per page.
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.