

ORDINANCE NO. 776

AN ORDINANCE OF SELINGROVE BOROUGH, SNYDER COUNTY, PENN SYLVANIA ESTABLISHING THE POSITION OF OPEN RECORDS OFFICER, POLICIES TO FACILITATE REQUESTS FOR PUBLIC RECORDS OF SELINGROVE BOROUGH, THE MANNER IN WHICH RECORDS SHALL BE DISSEMINATED, THE PROCEDURES THROUGH WHICH DECISIONS SHALL BE MADE CONCERNING DISSEMINATION OF PUBLIC RECORDS, THE APPEALS PROCESS FOR THE DENIAL OF ACCESS TO RECORDS, AND A FEE SCHEDULE FOR DUPLICATION AND CERTIFICATION OF PUBLIC RECORDS OF THE BOROUGH OF SELINGROVE, AND REPEALING ANY AND ALL ORDINANCES CONTRARY TO THIS ORDINANCE.

The Council of Selingsrove Borough, Snyder County, Pennsylvania, ordains as follows:

SECTION 1. Authority for Ordinance. This Ordinance is adopted in conformance with and pursuant to authority granted by Sections 1006 and 1201 of The Borough Code, as amended (53 P.S. § 46006 & 46201) and Act No. 3 of 2008 known as the Pennsylvania Right- To-Know Law, effective January 1, 2009 (the 'Act').

SECTION 2. Intent. The intent of this Ordinance is to promote the health, safety, and welfare of the community by establishing the position of Opens Records Officer and the written policies necessary to provide for access to public records of the Borough of Selingsrove and a reasonable fee schedule associated therewith.

SECTION 3. Definitions. The following words and phrases when used in this Ordinance shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

Aggregated data .A tabulation of data which relates to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.

Appeals Officer .The individual or agency designated to hear appeals by the Commonwealth of Pennsylvania.

Borough .The Borough of Selingsrove, Snyder County, Pennsylvania.

Borough Council .The duly elected Council of the Borough.

Confidential proprietary information .Commercial or financial information received by the Borough:

- (1) Which is privileged or confidential; and
- (2) The disclosure of which would cause substantial harm to the competitive position of the person that submitted that information.

Financial record .Any of the following:

(1) Any account, voucher or contract dealing with: (i) the receipt or disbursement of funds by the Borough; or (ii) the Borough's acquisition, use or disposal of services, supplies, materials, equipment or property.

(2) The salary or other payments or expenses paid to an officer or employee of the Borough, including the name and title of the officer or employee.

(3) A financial audit report. The term does not include the work papers underlying an audit.

Homeland Security .Governmental actions designed to prevent, detect, respond to and recover from acts of terrorism, major disasters and other emergencies, whether natural or manmade. The term includes activities relating to the following:

(1) Emergency preparedness and response, including preparedness and response activities by volunteer medical, police, emergency management, hazardous materials and fire personnel,

(2) Intelligence activities,

(3) Critical infrastructure protection,

(4) Ground, aviation and maritime transportation security,

(5) Biodefense,

(6) Detection of nuclear and radiological materials, and

(7) Research on next-generation securities technologies.

Legislative record .Any of the following relating to the Borough Council or a standing committee of the Borough:

(1) A financial record.

(2) An ordinance or resolution enacted or adopted by the Borough Council.

(3) Fiscal notes.

(4) The minutes of record of attendance of members of Borough Council at a public hearing or meeting or a public committee meeting and all recorded votes taken at a public meeting.

(5) The transcript of a public hearing when available.

(6) Meeting rules of the Borough Council.

Office of Open Records .The Open Records Office established by the Commonwealth of Pennsylvania.

Open Records Officer .The officer appointed by the Borough Council to implement the policies and procedures established by this Ordinance. Such officer shall serve at the discretion of the Borough Council until replaced by it at a regular, special or reorganization meeting.

Personal financial information .An individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances.

Privilege The attorney-work product doctrine, the attorney-client privilege, the doctor- patient privilege, the speech and debate privilege, executive session notes and materials, or other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania.

Public record .A record, including financial record, of the Borough that:

- (1) Is not exempt under Section 708 of the Pennsylvania Right-To-Know Law, as amended;
- (2) Is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- (3) Is not protected by privilege.

Record .Information, regardless of physical form or characteristics, that documents a transaction or activity of the Borough and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the Borough. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

Requester .A person that is a legal resident of the United States and requests a record pursuant to this Ordinance. The term includes an agency.

Response .Access to a record or the Borough's written notice to a requester granting, denying or partially granting or partially denying access to a record.

Trade secret .Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term includes data processing software obtained by the Borough under a licensing agreement prohibiting disclosure.

SECTION 3. Open Records Officer. The Borough Council hereby establishes the position of Open Records Officer for the Borough for the purposes of implementing this Ordinance and having the Borough comply with the requirements of the Act.

SECTION 4. Functions Of Open Records Officer. The Open Records Officer shall receive requests submitted to the Borough under this Ordinance and the Act, direct requests to other appropriate persons within the Borough, track the Borough's progress in responding to requests and issue interim and final responses under this Ordinance and the Act. Upon receiving a request for public record, the Open Records Officer shall do all of the following:

(1) Note the date of receipt on the written request;

(2) Compute the day on which the five-day period will expire and make a notation of that date on the written request; and

(3) Maintain an electronic or paper copy of the 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 thirty (30) days or, if an appeal is filed, until a final determination is issued by the Open Records Office or the appeal is deemed denied.

SECTION 5. Policy For Access To Public Records. As required by the Act, the Borough Council hereby enacts the following policy:

A. All requests for access to public records shall be made in writing, verbally (in person or telephonically), electronically, or by facsimile.

B. All requests for access to public records shall be directed to the Open Records Officer, Office of the Borough Secretary, Borough of Selinsgrove, One North High Street, Selinsgrove, Snyder County, PA 17870, telephone no. 570-374-2311, facsimile no. 570-374- 8902, email at slgvboro@snydercounty.org.

C. Unless otherwise provided by law, a public record or legislative record shall be accessible for inspection and duplication in accordance with this Ordinance and the Act. A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records or legislative records shall be made available for access during the regular business hours of the Borough office. When Responding to a request for access, the Borough shall not be required to create a record which 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. The Borough shall not prepare any aggregated data and shall not provide access to any confidential proprietary information, Homeland Security records, personal financial information, or trade secrets within its possession or control.

D. When a request is received for access to public records, the Open Records Officer shall make a determination within five (5) business days of receipt of the request, to grant or

deny the request. The requester of the record shall be promptly notified in writing of the response.

E. If, after receiving a request for access to public records, the Open Records Officer determines any of the following circumstances exist, the requester shall be issued a notice in writing that the request is being reviewed and an extension of time is required:

- (1) The request requires redaction of a public record;
- (2) The request requires retrieval of a record stored in a remote location;
- (3) A timely response to the request cannot be accomplished due to bona fide and specified staff limitations;
- (4) A legal review of the request is necessary to determine whether the record is a public record subject to access under this Ordinance and the Act;
- (5) The person making the request has not complied with the Boroughs policies regarding access to public records;
- (6) The requester refuses to pay the applicable fees as contained in this Ordinance; or
- (7) The extent or nature of the request precludes a response within the required time period.

F. Upon a determination that one of the factors listed in Subsection E above applies, the Open Records Officer shall send written notice to the requester within five (5) business days of receipt of the request for access as provided above. The notice shall include the following:

- (1) A statement notifying the requester that the request for access is being reviewed;
- (2) The reason for the review; and
- (3) A reasonable date that the response is expected to be provided and the estimate of the 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 in Subsection D above, 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 Borough has not provided a response by that date.

G. If the Boroughs 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 reason for the denial, including a citation of supporting legal authority;
- (3) 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;
- (4) Date of the response; and
- (5) The procedure to appeal the denial of access under this Ordinance and the Act.

H. If the Borough 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 applicable fee as provided for herein below.

I. If the Boroughs response to a requester states that copies of the requested records are available for delivery at the office of the Borough and the requester fails to retrieve the records within sixty (60) days of the Borough's response, the Borough may dispose of any copies which have not been retrieved and retain the fees paid to date.

J. The Borough may make its records available through any publicly accessible electronic means. The Borough may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the Borough will provide access to inspect the record electronically. If the requester is unwilling or unable to access the records electronically, the requester may, within thirty (30) days following the receipt of the Borough's notification, submit a written request to the Borough to have the record converted to paper. The Borough shall provide access to the record in printed form within five (5) days of the receipt of the written request for conversion to paper.

K. 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 Borough. A denial under this Subsection shall not restrict the ability to request a different record.

SECTION 6. Exceptions For Public Records. The Borough hereby adopts the exceptions for public records set forth in Section 708(b) of the Act as the exceptions for public records under this Ordinance and incorporates such exceptions herein by this reference as if set forth at length by this reference.

SECTION 7. Appeal From Denial. If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records within fifteen (15) days of the mailing date of the Borough's response or within fifteen (15) business 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 Borough for delaying or denying the request. The procedures for appeal before the Appeals Officer and judicial review shall be governed by the provisions of Chapters 11 and 13 of the Act which provisions are incorporated herein as if set forth at length by this reference.

SECTION 8. Duplication And Certification Fees. The following fees shall be applicable to requests for access to public records:

- (1) Photocopying fees .Twenty-Five Cents (\$0.25) per page for one-sided copies;
- (2) Photocopying fees .Thirty-Five Cents (\$0.35) per page for two-sided copies;
- (3) Computer copying fees .Twenty-Five Cents (\$0.25) per page for one-sided copies;
- (4) Computer coping fees .Thirty-Five Cents (\$0.35) per page for two-sided copies;
- (5) Faxes to non-toll telephone numbers .One Dollar (\$1.00) for the first page and Fifty Cents (\$0.50) for each additional page;
- (6) Faxes to toll telephone numbers .Two and 75/100 Dollars (\$2.75) for the first page and One Dollar (\$1.00) for each additional page;
- (7) U.S. Postal Rates .Current First Class Postage Charges Per Ounce.
- (8) Certification of a public record .Four and 75/00 Dollars (\$4.75) for the first page per record certified and One and 75/100 Dollars (\$1.75) for each additional page;
- (9) Copying records onto electronic media .Twenty Dollars (\$20.00) plus actual cost of materials and media used for copying;
- (10) Copying off-site of subdivision, land development or other plans .Twenty Dollars (\$20.00) plus actual costs incurred by Borough; and
- (11) Costs of production determined by amount of staff time for preparation of response based upon the rate of Fifteen Dollars (\$15.00) per hour or fraction thereof.

The Borough from time to time may modify or add to the fee and certification schedule by duly adopted resolution which resolution shall have the same effect as if set forth herein at length.

SECTION 9. Deposit. If the estimated cost of duplication and/or certification of a public record is estimated to exceed One Hundred Dollars (\$100.00), the Borough may require the requester to prepay the estimated fees authorized by this Ordinance, prior to providing access to the public record. Access to the records shall be postponed or even denied until the prepayment is received by the Borough.

SECTION 10. Forms. The Borough shall utilize the form attached hereto as Exhibit "A" to process all requests for access to the Borough's public records. When completed, a copy of the form shall be given to the requester and the original shall be retained by the Borough.

SECTION 11. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

SECTION12. Repealer. Selinsgrove Borough Ordinance No. 724 and any and all other ordinances or parts thereof inconsistent herewith are hereby repealed.

SECTION 13. Ratification. By the enactment of this Ordinance the Borough Council hereby ratifies any and all acts performed in the implementation of the terms and conditions set forth above which may have occurred prior to the effective date hereof.

SECTION 14. Effective Date. This Ordinance shall become effective immediately upon enactment.

ADOPTED this 5th day of October 2009, by the Council of Selinsgrove Borough, Snyder County, Pennsylvania, in lawful session duly assembled after proper notice having been given.