

ORDINANCE NO. 742

**BOROUGH OF FOUNTAIN HILL  
LEHIGH COUNTY, PENNSYLVANIA**

AN ORDINANCE IMPLEMENTING THE REQUIREMENTS OF THE PENNSYLVANIA  
OPEN RECORDS LAW BY ADOPTING A FORMAL POLICY, RULES AND  
REGULATIONS AND FORMS FOR REQUESTS FOR INSPECTION AND/OR COPYING  
OF PUBLIC RECORDS.

**FOUNTAIN HILL BOROUGH RIGHT TO KNOW ORDINANCE**

1. **TITLE.** A New Ordinance: (a) implementing the requirements Act 3 of 2008, the Pennsylvania Open Records Law; (b) adopting a formal policy to follow when handling requests for access to public records; (c) adopting rules and regulations for implementing such policy; (d) adopting forms to be used for any and all requests for access to public records; and (e) establishing provisions for preserving the integrity of the Borough's records and minimizing the financial impact to the residents of the Borough regarding the resources consumed in the copying of Borough files.

2. **SHORT TITLE.** This Ordinance shall be known and be cited as the "Fountain Hill Borough Right to Know Ordinance" of 2009.

3. **SEVERABILITY.** It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provisions of this Ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Ordinance shall continue to be separately and fully effective. Borough Council hereby declares that it would have passed this Ordinance and each section or part thereof, other than any part declared invalid, if it has advance knowledge that any part would be declared invalid.

4. **PROCEDURAL DEFECTS IN ENACTMENT.** Any procedural challenge shall be filed in accordance with applicable law.

5. **ENACTMENT.** Under Authority of Law, Borough Council of Fountain Hill hereby enacts and ordains into an Ordinance the attached documents this date of March 4, 2009. The provisions of this Ordinance shall become effective immediately from the date of passage of this Ordinance.

Date of Borough Council Public Hearing: March 4, 2009

**DULY ENACTED AND ORDAINED** on this 4th day of March, 2009, by the Borough of Fountain Hill in lawful session duly assembled.

**BY:**

\_\_\_\_\_  
Lawrence E. Rapp, President of Council

**ATTEST:**

\_\_\_\_\_  
Rick Prill, Borough Secretary

**APPROVED:**

\_\_\_\_\_  
Ned. C. Fink, Mayor

March 4, 2009

**DATE**

	Motion	2nd	Yes	No	Abstain
Tavis Grotenhuis			X		
Carolee Gifford			Absent		
Norman Blatt			X		
Fred Capuano			X		
Larry Rapp			X		
Doug Trotter	X		X		
Helen Halleman		X	X		
Mayor Ned Fink					

## SCHEDULE 1

**Borough of Fountain Hill  
941 Long Street,  
Fountain Hill, PA 18015**

### **OPEN RECORDS POLICY**

#### 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 Fountain Hill; to preserve the integrity of Fountain Hill'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 records.

#### Requests:

All requests for information solely regarding matters handled by or administered by the Police Department in and for Fountain Hill shall be directed to the Chief of Police at Police Headquarters: 941 Long Street, Fountain Hill, Pennsylvania 18015, and all other requests for information shall be directed to the Borough Secretary at Borough Hall: 941 Long Street, Fountain Hill, Pennsylvania 18015.

All requests shall be in writing on the form provided by the Pennsylvania Office of Open Records. Said form is available at Borough Hall or at <http://openrecords.state.pa.us>.

The Borough shall make a good faith effort to determine whether the record requested is a public record. In no case shall the Borough be required to create a public record that 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.

Public records will be available for inspection and/or copying at Police Headquarters or Borough Hall during normal business hours, Monday through Friday, 8:30 a.m. to 4:30 p.m., with the exception of holidays. The Borough reserves the right to be present during the inspection and/or copying of public records and to take reasonable measures during such inspection and/or copying to protect Borough documents from the possibility of theft and/or modification.

#### Response:

The Police Chief and/or the Borough Secretary will review all written requests for access to public records within **five business days** after receiving such request. The Police Chief and/or the Borough Secretary also may designate certain employee(s) to process the public record request.

The Police Chief and/or the Borough Secretary will respond to all requests in a manner consistent with the Rules and Regulations promulgated by the Borough and in accordance with Act 3 of 2008, the Pennsylvania Right to Know Law.

If the Police Chief and/or the Borough Secretary do not respond within **five business days**, the request shall be deemed denied.

Fees:

Paper copies will be \$0.25 per page per side. If mailing is requested, the cost of postage will be charged. If a disk is requested, it will be provided by the Borough at the cost of \$1.00 per disk. A new disk will be necessary each time records are provided. Fax copies will be available at the cost of \$0.50 per page. If “true and correct certification” is requested, an additional charge of \$2.00 will be added. The Borough will require prepayment if the total fees are estimated to exceed \$100.00.

In exceptional cases, such as copying of maps or plans, additional fees may be imposed for costs actually incurred by the Borough for complying with the request.

Appeals:

If the request is denied or deemed denied, the requester 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) business days of the 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 state by the agency for delaying or denying the request. Guidelines for the appeal can be obtained from the Office of Open Records or at <http://openrecords.state.pa.us>.

Within thirty (30) days of the mailing date of the final determination from the Commonwealth’s Office of Open Records, 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 for Lehigh County. A petition for review under this section shall stay the release of documents until a decision is issued.

Access to Policy:

This policy and the Act shall be available for review at Borough Hall.

Effective Date:

This policy shall become effective upon adoption of Ordinance #739.

**SCHEDULE 2**

**RULES AND REGULATIONS**  
**PERTAINING TO THE BOROUGH OF FOUNTAIN HILL'S**  
**OPEN RECORDS POLICY**

The purpose of the Borough of Fountain Hill's Open Records Policy is to provide access to public information and appoint two (2) designated open-records officers in the Borough.

1. Definitions.

Financial Records. The term "**Financial record**" includes: (1) any account, voucher or contract dealing with the receipt or disbursement of funds by the Borough; or the Borough's acquisition, use or disposal of services, supplies, materials, equipment or property, or (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, or a financial audit report. The term does not include work papers underlying an audit.

Public Records. The term "**Public record**" include documents that: (1) are not exempt under Pennsylvania's Right to Know Law; (2) are not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) are not protected by a privilege.

Record. Information, regardless of physical form or characteristic, 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.

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

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

denying or partially granting and partially denying access to a record.

2. Prohibitions. A request for access to a public record may not be denied due to the intended use of the public record by the requester unless otherwise provided by law.

3. Presumption. A record in the possession of the Borough is presumed to be a public record. The presumption will not apply if:

- (a) The record is exempt under the Pennsylvania Open Records Law;
- (b) The record is protected by a privilege; or
- (c) The record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.

4. Open Records Officers.

(a) The open-records officers shall receive requests submitted to the Borough under this act, 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 under this act.

(b) Upon receiving a request for a public record, legislative record or financial record, the open-records officers shall do all of the following:

- (i) Note the date of receipt on the written request.
- (ii) Compute the day on which the five-day response period will expire and make a notation of that date on the written request.
- (iii) 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 or the appeal is deemed denied.

(c) The open-records officer for all requests for information solely regarding matters handled by or administered by the Police Department in and for Fountain Hill shall be the Chief of Police and the open-records officer for all other requests for information shall be the Borough Secretary.

## 5. Requests.

(a) Disruptive Requests. 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.

(b) Disaster or Potential Damage. The Borough may deny a requester access: (i) when timely access is not possible due to fire, flood or other disaster; or (ii) to historical, ancient or rare documents, records, archives and manuscripts when access may cause physical damage or irreparable harm to the record. 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 Federal or State law or regulation or 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, agency or public interest that may favor restriction of access.

(d) Borough Possession. A public record that is not in the possession of the Borough but is in the possession of a party with whom the Borough has contracted to perform a governmental function , and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the Borough.

(e) Submission of Request. The Borough may fulfill verbal, written or anonymous verbal or written requests for access to records under this act. If the requester wishes to pursue the relief and remedies provided for in this act, the request for access to records must be a written request.

(i) A written request for access to records may be submitted in person, by mail, by

e-mail, by facsimile or, any other electronic means.

(ii) A written request must be addressed to the open-records officer.

(iii) Employees of an agency shall be directed to forward requests for records to the open-records officer.

(iv) A written request should identify or describe the records sought with sufficient specificity to enable the Borough to ascertain which records are being requested and shall include the name and address to which the Borough should address its response.

## 6. Response.

(a) Electronic Access. If a requested record is available by publicly accessible electronic means, the Borough may notify the Requestor of its availability. The Requestor may request that the record be converted to a paper copy within thirty (30) days of the Borough's notification.

(b) Time Period. The Borough will respond to all requests within five (5) business days. Such response will consist of either: (1) an approval for access to the public record, (2) review of the request by the designated employee, or (3) denial of the record requested.

(c) Access. 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, legislative records or financial records shall be available for access during the regular business hours of the Borough.

(d) Fees. Fees for duplication of public records shall be as established by the Commonwealth's Office of Open Records. Said fees are outlined more fully in the Borough's Open Records Policy.

(e) Review. If the request is being reviewed, the Borough shall notify the requestor of such review in writing and include the reason for the review and 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, the request is deemed denied. Review of the request is limited to situations where:

(i) 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;

- (ii) The record requires retrieval from a remote location;
- (iii) A timely response cannot be accomplished due to staffing limitations;
- (iv) A legal review is necessary to determine whether the record requested is a public record;
- (v) The requestor has failed to comply with the Borough's policy and procedure requirements;
- (vi) The requestor refuses to pay the applicable fees;
- (vii) The extent or nature of the request precludes a response within the required time period.

(f) Denial. If access to the record is denied, the notice provided by the Borough shall be in writing.

7. Exceptions. Although a record in the possession of the Borough is presumed to be public, there are records that are exempt from disclosure; the complete list of said exceptions is available at <http://openrecords.state.pa.us>, and attached hereto as Schedule 3.

#### 8. Appeal.

(a) 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 15 business days of the mailing date of the agency's response or within 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, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request. The Office of Open Records shall assign the appeal to an appeals officer.

(b) Unless otherwise notified, the appeals officer will issue a decision within thirty (30) days of the appeal. If a decision is not issued within thirty (30) days, the appeal is deemed denied.

(c) Within 30 days of the mailing date of the final determination of the appeals officer the date a request for access is deemed denied, a requester or the agency may file a petition for review or other document as might be required by rule of court with the Lehigh County Court of Common Pleas.

(d) A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.