EAST WHITELAND TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA
OPEN RECORDS LAW
POLICIES AND PROCEDURES

1. **BACKGROUND.** Act 3 of 2008 commonly known as the "Open Records Law" fundamentally changes the "Right-to-Know Law" by mandating a presumption of disclosure and shifting the burden of denial to the government, with those and other provisions of the new law to be effective January 1, 2009. The Open Records Law substantially amended the Act of June 21, 1957 (P. L. 390, No. 212), and Act 2002-50 (P. L. 663, No. 50), 65 P. S. §§ 66.1-66.9, commonly referred to as the "Right-to-Know Law," and therefore requires the Township of East Whiteland to amend its open records policies and procedures to allow implementation of the Open Records Law.

2. **DEFINITIONS.**

   a. **Act or Open Records Law.** The Act of June 21, 1957 (P. L. 390, No. 212), as amended by Act 2002-50, 65 P. S. §§ 66.1-66.9, commonly referred to as the "Right-to-Know Law," and, Act 3 of 2008, commonly referred to as the "Open Records Law".

   b. **Deemed Denied.** A request is deemed denied if one of the following conditions occurs: (i) the Open Records Officer receiving a written Open Records request fails to respond within the initial 5-business-day period; (ii) the Open Records Officer extends the 5-business-day period by up to 30-calendar-days, but then fails to respond by the end of that extended period; or (ii) the Open Records Officer notifies the Requester that it requires additional time to respond in excess of the permitted 30-calendar-day period.

   c. **Mailing Date.** The date affixed to a response to a request for access to records, which is to be the date the response is deposited in the United States Mail or, for a person submitting a request or exceptions, the date of the postmark on the envelope transmitting the request or exceptions.

   d **Municipality.** East Whiteland Township, Chester County, Pennsylvania.

   e. **Open Records Officer.** Any official or employee designated by the East Whiteland Township Board of Supervisors to receive Open Records Requests.

f. **Open Records Request.** Either (i) a written request submitted to the Open Records Officer asking for access to a Record, a copy of a Record or information purported to be in the possession of the Municipality; or (ii) a written request presented to the Open Records Officer that invokes the Act.

g. **Public Record.** Any document that satisfies the general definition of "public record" set forth in the Act 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.

h. **Requester.** A person who requests a record pursuant to the Open Records Law.

i. **Response.** The Open Records Officer's reply to a request made pursuant to the Act. A response may be either (i) the act of providing the Requester with access to a record, or (ii) the Open Records Officer's written notice granting, denying or partially granting and partially denying access to a record.

3. PROCEDURE.

a. **Open Records Officer**. Pursuant to the Act, the Township Manager shall be designated as Municipality's Open Records Officer responsible for receiving, tracking, and responding to Open Records Requests. In the absence or unavailability of the Open Records Officer, the Township Secretary may act as the Deputy Open Records Officer.

b. **Requests.**

(1) **Oral requests.** The Act does not require that the Municipality respond to oral requests. The Open Records Officer may refuse to accept any oral request.

(2) **Anonymous requests.** The Act does not require that the Municipality respond to Anonymous requests. The Open Records Officer shall refuse to accept any written request that does not identify the Requester.

(3) **Non-anonymous written requests**. The Act requires that the Municipality act upon each non-anonymous written request when such request is submitted in person, by mail, or by facsimile or e-mail. Requests submitted by an electronic method (e-mail) or by facsimile are permitted by the Act.

(4) **Contents of a request.** The Act sets forth various specifications for the contents of a written request. Thus, the request must include the name of the Requester and the address to which the Municipality should address its Response. The request should identify or describe the Records sought with sufficient specificity to enable the Municipality to ascertain which Records are being requested.

(5) **Reason for the request.** The Act provides that the Requester need not include the reason for the request or the intended use of the Records. Therefore, the Municipality shall not insist that such a statement be provided, nor shall it reject or refuse a request on the grounds that no such reason was given.

(6) **Forms.** The Municipality has created an Open Records Request Form which is attached hereto, as well as an Open Records Request Tracking Form. However, pursuant to the Act, a Request may also be made using forms available from the Commonwealth of Pennsylvania Office of Open Records.

(7) **Citizenship requirement.** The Act provides that the Municipality provide a Requester with access to a Public Record if the Requester is a citizen of the United States. The Municipality may require that the Requester produce photographic identification to determine proof of citizenship.

c. Submittal of Open Records Requests.

(1) All Open Records Requests are to be addressed to:

Terry Woodman
Township Manager
East Whiteland Township
209 Conestoga Road
Frazer, PA 19355

or – twoodman@eastwhiteland.org

The Municipality shall post this information to its website and shall post it at a location that is publicly accessible.

(2) The five (5) business day period does not begin to run until

the Municipality's designated Open Records Officer has received a request. If an Open Records Request is submitted to some official or employee of the Municipality other than the Open Records Officer, the five (5) business day period has not yet begun.

d. Municipality's Duty to Provide a Prompt Response to an Open Records Request.

(1) Five (5) business-day period. Section 3.3(a) of the Act provides that, upon receipt of a written Open Records Request, the Municipality must make a good faith effort to determine if the requested Record is a Public Record and to respond as promptly as possible under the circumstances existing at the time of the request, and that this time shall not exceed five (5) business days from the date the written request is received by the Municipality's Open Records Officer. The Act provides that either a final or an interim written response must be made within five (5) business days from the date that the Open Records Officer received the request. If the Open Records Officer fails to respond within that time period, the Open Records Request is Deemed Denied.

(2) 30-calendar-day extension period. Although, in general, the Act and this Policy contemplates that Requesters will receive a Response within the five (5) business day period, it also provides the Municipality with certain specific exceptions to invoke a single extension of time, which may not exceed 30 calendar days. If an extension is invoked and then there is no timely Response, the Open Records Request is Deemed Denied. Likewise, if the Open Records Officer notifies the Requester that it needs more than the maximum of 30 days, the request is Deemed Denied.

(3) For purposes of determining the five (5) business-day period:

(i) A business day shall be from 9:00 a.m. until 5:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday, except those days when the offices of the Municipality are closed for all or part of a day due to a holiday; due to severe weather (such as a blizzard or ice storm); due to natural or other disaster; or due to the request or direction of local, state, or federal law enforcement officials.

(ii) Any Open Records Request received by the Open Records Officer after the close of its regular business hours shall be deemed received on the following

business day. Thus, for example, a facsimile transmission received at 6:00 p.m. on a Friday is deemed to be received on the following Monday (unless that Monday is a holiday).

(iii) For the purposes of determining the end of the five (5) business day period, the day that an Opens Records Request is received (or deemed received) is not counted. The first day of the five (5) business day period is the Municipality's next business day.

e. **Maintenance of Requests.** The Open Records Officer shall maintain an electronic or paper copy of the request, including all documents submitted with the request and the Open Records Tracking Form. The Open Records Officer will maintain Requests for a minimum of 30 days unless an appeal is filed, in which case the request shall be maintained until a final determination is issued or the appeal is deemed denied.

f. **Responses.**

(1) The act of providing a Requester with physical access to a document or a copy of the requested Record, in the Open Records Office, is a "Response" for purposes of this Open Records Policy. Unless the Municipality issues written policies to the contrary, only the Open Records Officer possesses the authority to permit this access.

(2) Where timely access is not provided in accordance with (1), the Act requires that the Municipality's Response be in writing. The Open Records Officer has the duty to prepare and send written Responses.

(3) The Municipality is not required to create a Public Record that does not already exist, nor is the Municipality required to compile, maintain, format, or organize a Public Record in a manner in which the Municipality does not currently do so.

(4) The Open Records Officer shall send written Responses to Requesters by one of the following, in its discretion: United States mail, facsimile transmission; electronic transmission; overnight or parcel delivery service; or, courier delivery.

(5) The Act requires that the Municipality must provide a Response to an Open Records Request within five (5) business days unless one or more specific conditions are

satisfied and the Municipality gives the Requester written notice that additional time will be required. That notice is referred to as an "interim Response."

(6) Deemed Denials. The failure of the Municipality to make a timely final Response is a Deemed Denial under the terms of the Act.

(7) Responses that deny Open Records Requests, either in whole or in part.

(i) A Response that denies an Open Records Request (either in whole or in part) shall list all of the specific reasons relied upon by the Municipality for denying the Open Records Request.

(ii) In the event that the Municipality's Response is a denial or a partial denial, the Response shall also contain a notice informing the Requester of his or her right to file an appeal, and shall set forth the name and mailing address of the Commonwealth of Pennsylvania Office of Open Records.

(iii) Inaction by the Municipality is not a Response, even when it results in a Deemed Denial.

(8) Redaction.

(i) "Redaction" means the eradication of a portion of a record while retaining the remainder.

(ii) Method. A Record shall be redacted when parts of the Record are not Public record or are protected and shall not be disclosed as set forth in the Act. Redaction shall be performed in such a way as to maintain the confidentiality or security of the protected information. Thus, for instance, merely crossing out text usually does not suffice if the underlying words can be made out by careful examination. An example of effective redaction is to create a photocopy of an existing document; to completely obliterate the selected text using a black marker; and to photocopy that document (so that the obliterated text on the first copy cannot be read through the marker ink). Other techniques may also be used. In complying with the Open Records Law's

redaction requirements, the Municipality is not required to alter their original records.

4. DUPLICATION OF PUBLIC RECORDS.

a. A Public Record shall be accessible for duplication by a Requester. The Municipality does not make duplication equipment available to a Requester but shall provide other means by which a Requester may obtain copies, through Municipality personnel.

b. The Municipality will assign its own staff to make the duplications requested by the Requester; or it may contract for duplication services and require that the Requester pay the contractor for those services. The Municipality shall charge the Requester a reasonable fee consistent with the prevailing charges in the geographic location where the duplication occurs. Resolution of the Municipality governing body shall establish such fees from time to time. When the Commonwealth of Pennsylvania Office of Open Records establishes a statewide fee schedule, such schedule shall replace the schedule adopted by the Municipality, to the extent required by the Act.

c. The Municipality may at its discretion waive fees.

d. 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 inform the Requester of the expected cost in advance of fulfilling the Request. If the Requester does not pay in advance, the request will be denied.

e. If access to the Record requested is denied, the notice provided by the Municipality shall be in writing as indicated on the form attached hereto.

f. If the Request is denied or deemed denied, the Requester may file an appeal with the Commonwealth of Pennsylvania Office of Open Records within fifteen (15) business days of the mailing date of the Municipality's notice of denial, or within fifteen (15) 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 agency for delaying or denying the request.

g. Within thirty (30) days of the mailing date of the final determination of the appeals officer, the Requester or Municipality may file a petition for review or other document as required by Rule of Court with the Court of Common Pleas for Chester 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.

h. If Requester fails to pick up requested records that have been duplicated for the requester, the Municipality may dispose of the copies after 60 days and is not required to send reminder letters.

i. This policy shall be available for review at the Municipality office and on its website.