

**BOROUGH OF NEW CUMBERLAND
CUMBERLAND COUNTY, PENNSYLVANIA
RESOLUTION 01-2019**

OPEN RECORDS AND PUBLIC DOCUMENTS POLICY AND PROCEDURE

WHEREAS, the Borough of New Cumberland recognizes the Act of February 14, 2008, P.L. 6, No. 3, as amended by Act 2008-3, 65 P.S. § 67.101 et seq., commonly known as the "Right-to-Know Law" controls the manner in which public documents and records are made available for public inspection; and

WHEREAS, the Borough of New Cumberland recognizes the Right-to-Know Law creates a presumption for disclosure of a public record or document and shifts the burden of denial to the municipality; and

WHEREAS, the Borough of New Cumberland desires to maintain a policy and procedure consistent with 65 P.S. § 67.101 et seq. for public access to records and documents as of March 6, 2019 as to any office within the Borough of New Cumberland, so as to balance the public's interest in having an open and transparent government against the Borough's ability to conduct administrative affairs in an efficient manner free from excessive scrutiny, harassment, and the protection of confidential information, as well as statutorily precluded records; and

WHEREAS, the Borough of New Cumberland desires to appoint a person(s) as open records official(s) who shall have the authority to determine whether an exception exists as to a request for a record, to preside at hearings (if requested or held), to issue a written determination as to whether or not a request is denied in accordance with the Right-to-Know Law or other statutory exemptions; and

WHEREAS, the Borough of New Cumberland desires to create a uniform form for public requests for public records and documents which is available to the public; and

WHEREAS, the Borough of New Cumberland desires to create a uniform fee schedule for reproduction of public records and documents in association with a written request for any record or document; and

NOW THEREFORE, it is hereby resolved that the Borough of New Cumberland establishes the following policy and procedures for records and documents maintained by the Borough of New Cumberland so as to comply with the above-referenced laws and statutes within the Borough of New Cumberland.

I. Authority

The Borough of New Cumberland ("Agency") adopts this policy pursuant to Section 504(a) of the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 ("RTKL"). The Agency has made this policy available to the public at its administrative office located at 1120 Market Street, New Cumberland, Pennsylvania 17070, and on its public website, along with the Agency written request form. See 65 P.S. § 67.504(b) (relating to agency posting requirements under the RTKL).

II. Definitions

All of the definitions set forth in the RTKL are incorporated into this policy by reference. See 65 P.S. § 67.102.

AORO. The Agency Open Records Officer designated by the Agency pursuant to Section IV of this policy.

Business day. The regular business hours of the Agency are Monday through Friday from 9:00 am to 4:00 pm. Business days exclude Saturday and Sunday and a weekday on which the Agency is closed for business.

III. Agency Website

The Agency maintains a public website at <http://newcumberlandborough.com/>. Many of the records most commonly requested from the Agency are available on the website. The following information is also posted on the Agency's website: AORO contact information; contact information for the OOR; a form which may be used to file a written RTKL request; and a copy of this policy. See 65 P.S. § 67.504(b) (relating to agency posting requirements under the RTKL).

IV. Submitting a RTKL Request to the Agency

- A. Open Records Officer. The Agency has designated an AORO and an Alternate AORO to respond to RTKL requests. The following contact information is posted on the Agency website.

The contact information for the Agency Open Records Officer is:

- a. Joseph Spadaccino, Borough of New Cumberland, 1120 Market Street, P.O. Box 220, New Cumberland, PA 17070; fax - (717) 774-8163; email - info@newcumberlandboro.com

The contact information for the Alternate Agency Open Records Officer is:

- b. Stacy Black, Secretary, Borough of New Cumberland, 1120 Market Street, P.O. Box 220, New Cumberland, PA 17070; fax - (717) 774-8163; email - info@newcumberlandboro.com

- B. Requests. Requests for records should be submitted in writing using the Agency request form listed on the Agency website or by using the Uniform RTKL request form. All requests must be addressed to the AORO. See 65 P.S. § 67.703. If a requestor chooses not to use either request forms, the requestor's written RTKL request must clearly indicate that it is seeking records under the RTKL. All requests for records to the Agency must be made in writing. In order to allow the agency to locate the requested

records, and determine whether those records are public, requests for records must be specific, concise, and clearly identify as precisely as possible the records sought. See 65 P.S. § 67.703. Requestors must also clearly indicate the preferred method of access- paper copies, electronic copies, or by inspection. Requestors should retain a copy of the request for their file, as a copy of the request is necessary should the requestor appeal the Agency response.

- a. Content of written requests. Any and all requests shall be set forth on the Agency request form or Uniform RTKL request form. Each request must set forth the following items:
 - i. The name of the requestor;
 - ii. The address to which the AORO or Alternate AORO should address any responses;
 - iii. Identification and description of records sought with sufficient specificity to enable the AORO or Alternate AORO to determine which records are requested;
- C. Delivery locations for RTKL requests. All requests for records should be addressed and delivered to one (1) of the following locations:
 - a. By hand delivery. Office of the Secretary, Borough of New Cumberland, 1120 Market Street, New Cumberland, PA 17070.
 - b. By United States Mail. Office of the Secretary, Borough of New Cumberland, P.O. Box 220, New Cumberland, PA 17070.
 - c. By facsimile. Attn: Office of the Secretary, Borough of New Cumberland, (717) 774-8163.
 - d. By email. Attn: Office of the Secretary, Borough of New Cumberland, info@newcumberlandboro.com
- D. Receipt of the request. For the purpose of calculating the response deadline, the Agency is deemed to have received the request on the business day that the AORO receives the request. See 65 P.S. § 67.901. Any request that is received by the Agency after the close of regular business hours shall be deemed to be received on the next business day. If the request is received by an Agency employee other than the AORO, the request will be forwarded to AORO as soon as practical.
- E. Verbal requests. The Agency will respond to verbal requests for records at its discretion. Requesters submitting verbal requests for records should be aware that they may not pursue the remedies available to a requester under the RTKL.
- F. Anonymous requests. The Agency will not respond to anonymous requests for records.
- G. Response period generally. The Agency has five (5) business days to respond to a request for records under the RTKL. If an Agency does not respond, the request is considered "deemed denied," and a requester's appeal rights commence.

V. Agency Response

A. Extension of time for response. The Agency is permitted to take an additional thirty (30) calendar days to respond to any request for the reasons set forth in Section 902 of the RTKL. See 65 P.S. § 67.902. If the Agency invokes an extension, the Agency will inform the requester in writing, in accordance with the requirements set forth in Section 902(b)(2) of the RTKL.

B. Requestor's agreement to extend the response period. The requester may agree, in writing, to extend the Agency response period. See 65 P.S. § 67.902(b)(2). The requester must agree to the extension during the initial 5 business-day response period or the extended 30 calendar day response period, if the Agency has invoked one.

C. Trade secrets. If a request involves records provided to the Agency by a third party and the third party previously provided the Agency with a written statement that the record contains a trade secret or confidential proprietary information, the Agency shall provide notice to the third party. See 65 P.S. § 67.707(b).

D. Agency's processing of a response. Upon receipt of a RTKL request, the Agency shall complete the following:

1. Date-stamp the RTKL request;
2. Assign a number to the RTKL request with said number corresponding to the number of the request for the current calendar year;
3. Compute and confirm the date in which the five (5) business day response period will expire;
4. Make a copy of the RTKL request, including all documents submitted with the request, as well as envelope or electronic confirmation confirming the date in which it was received;
5. Create an official file for the retention of the RTKL request; and
6. Record or document the RTKL request in the system implemented by the AORO for monitoring RTKL requests.

E. Final response. The Agency may grant a request, partially grant and partially deny a request, or deny a request in its entirety. The final response of the Agency will be in writing. Should the Agency fail to issue a response within the applicable response period, the request is deemed denied. See 65 P.S. § 67.901.

1. Granting access to records. The Agency may grant a request for records by issuing a response: (1) granting access to inspect Agency records during the Agency's regular business hours; (2) sending copies of the records to the requester; or (3) by notifying the requester that the records are available on the Agency website or other publicly accessible electronic means. See 65 P.S. §§ 67.701(a), 704.

2. Denying or partially denying access to records. Should the Agency deny or partially deny a request for records through redaction or otherwise, the Agency will inform the requester of the denial or partial denial in writing. The response will describe the requested records, inform the requester that the Agency does not possess the responsive records or, if the records are exempt from public access, provide a citation to the relevant legal basis for withholding the requested records. See 65 P.S. § 67.903. Additionally, the response will provide the name, signature, title, business address and telephone number of the Open Records Officer who denied the request, as well as the date of the response and the procedure to appeal the denial. See 65 P.S. § 67.903.

F. Fees. The Agency will charge fees consistent with the RTKL Fee Structure, available at <http://www.openrecords.pa.gov/RTKL/FeeStructure.cfm>.

VI. RTKL Appeals

A. Generally. To challenge a denial, partial denial, or deemed denial of a request for Agency records, an appeal may be filed using the OOR appeal form, available at <http://www.openrecords.pa.gov/Appeals/AppealForm.cfm>, or by contacting:

Executive Director
Office of Open Records
Commonwealth of Pennsylvania
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
openrecords@pa.gov

1. Criminal investigative records. To challenge a denial or a request or portion of a request on the basis that records were withheld because they are related to criminal investigative records, an appeal should be filed by contacting:

Open Records Officer, Cumberland County District Attorney's Office
1 Courthouse Square, Room 202
Carlisle, PA 17013
districtattorney@ccpa.net

- B. Requirements of an appeal. All appeals must be filed within fifteen (15) business days of the mailing date of the Agency's denial, partial denial, or deemed denial of the request. All appeals must be in writing; must state the grounds upon which the requester asserts that the requested records are public records; must address any grounds stated by the Agency for denying the request; and must include a copy of the request and the Agency's response, if any. See 65 P.S. § 67.1101(a)(1).

VII. Agency Notification of Third Parties on Appeal

A. Agency must notify third parties. If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, the Agency must notify such parties of the appeal immediately and provide proof of that notice to the OOR within 7 business days from the date of the OOR's Official Notice of Appeal. Such notice must be made by (1) providing a copy of all documents included with the appeal to the OOR; and (2) advising that interested persons may request to participate in the appeal. See 65 P.S. § 67.1101(c).

VIII. Mediation

- A. The RTKL requires the OOR to establish an informal mediation process to resolve disputes under the RTKL. 65 P.S. § 67.1310(a)(6). This is a voluntary process to help parties reach a mutually agreeable settlement on records disputes before the OOR. Mediation, a facilitated conversation between the parties that can serve as a fair and efficient tool to resolve conflict, can save time and expense. When appropriate, the Agency is open to resolving RTKL disputes through the OOR's mediation process.

IX. Record Retention

A. Availability. The Agency's record retention policy is available at the Agency's website, <http://newcumberlandborough.com/>. Notwithstanding any other existing record retention policy, once a RTKL request is received, the Agency shall maintain, preserve, retain, protect, and not destroy any and all records, both electronic and hard copy, that are potentially responsive to the request until such time as the request is fulfilled and all associated appeals are resolved.

X. Additional Information about the RTKL

A. Additional information. Additional information is available about the RTKL, the request process, and the appeal process is available on the OOR website at <https://www.openrecords.pa.gov>.

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ATTEST:

**NEW CUMBERLAND BOROUGH
COUNCIL PRESIDENT**


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